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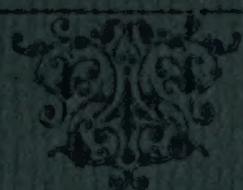
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LEAGUE OF NATIONS
BARCELONA CONFERENCE

1928-29-30
UNIV. OF
CALIFORNIA

VERBATIM REPORTS AND TEXTS
RELATING TO THE
CONVENTION
ON
FREEDOM OF TRANSIT



GENEVA 1921

LEAGUE OF NATIONS
BARCELONA CONFERENCE

VERBATIM REPORTS AND TEXTS
RELATING TO THE
CONVENTION
ON
FREEDOM OF TRANSIT



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PART I

STATEMENT BY M. LOUDON

(VICE-PRESIDENT OF THE CONFERENCE)

ON THE

QUESTION OF TRANSIT

AND

GENERAL DISCUSSION BY THE CONFERENCE

SEVENTH MEETING OF THE CONFERENCE

(Monday, March 14th, 1921, at 11 a.m.)

GENERAL SURVEY OF THE QUESTION OF TRANSIT. — GENERAL DISCUSSION

The Meeting opened with M. Hanotaux, President, in the Chair.

GENERAL SURVEY OF THE QUESTION OF TRANSIT

The PRESIDENT (speaking in French). — Gentlemen, in accordance with the decision taken at the meeting on Saturday evening, we will now proceed to deal with the Transit Convention (1). In accordance with the Agenda, a general statement regarding this question will be made by M. Loudon, one of our Vice-Presidents, whom I now call upon to speak. After this statement the question will be open for general discussion. At the termination of this discussion, the Conference will go into Committee, with M. Loudon as Chairman, and the various articles will be considered in detail.

M. LOUDON (Vice-President; speaking in French). — Mr. Chairman and Gentlemen, the Draft Convention on Freedom of Transit has its origin in Article 23 (e) of the Covenant. It is of especial interest, in that it constitutes an innovation and is an entirely new departure in the history of international law, for although railways and waterways have already been the subject of general conventions, this does not apply to transit.

The primary object of the Draft Convention is to provide the minimum guarantees necessary to ensure freedom of transit. Its provisions bear the impress of liberal ideas, in spite of the fact that it was found necessary to restrict the application of the principle of freedom in certain respects, to which I shall refer later. One of the more important of these restrictions relates to transport tariffs. The Convention, though of a general nature, only deals with transit by waterways and railways; since transit by road—over and above the Customs difficulties which it involves—has not yet assumed an economic importance sufficiently great to justify its inclusion, while transport by air will be dealt with by the International Convention on Air Navigation.

Article 1, though it does not give an exact definition of transit, lays down that persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport shall be deemed to be in transit across the territories situated under the sovereignty or authority of any one of the High Contracting Parties, when the passage across the said territories is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the Contracting Party across whose territory the transit takes place. The provisions of the draft only refer to the utilisation of those *existing* routes which are most suitable for international transit. They do not in any way contemplate the establishment of new or special routes for this transit. Further, nothing in this Convention entails an obligation on the part of a State to afford to traffic in transit a general right of priority over internal traffic. The Convention recognises that the States through which the traffic passes in transit have a sovereign right to regulate the conditions applicable to such traffic, to select the

(1) The text employed as a basis for discussion will be found in Part IV, Section IV of this volume: *Draft Convention on Freedom of Transit*.

routes to be followed, to fix the rates charged, to impose legitimate duties and taxes and to take the necessary measures for police supervision.

With regard to dues, it is stipulated that no special duties or taxes shall be imposed on account of entry, exit, or transit, but this does not preclude the collection of dues on merchandise in transit solely in order to cover legitimate expenses of supervision and administration in connection with such transit traffic.

With regard to charges, Article 4 lays down that tariffs applied to transit traffic must be reasonable, *having regard to the conditions of the traffic, including considerations of commercial competition between different routes*. In the Commission of Enquiry (1), one of the most debated questions was whether a State through which transit traffic passed should be obliged to treat such traffic on a footing of equality with its own traffic, with regard to the tariffs and facilities afforded. A number of delegates considered that a State was entitled to encourage its industries and its agriculture by means of transport tariffs. Other delegations upheld the view that, if this principle were admitted, freedom of transit would cease to be a reality for a State whose commerce was dependent upon transit through other countries. It was also pointed out that, in order to protect its own commerce, a State might apply customs duties, but not special transport rates. It was found impossible to reach agreement on the points referred to. The Commission, however, compromised upon a text which sanctioned commercial differentiation but excluded distinctions of a political nature, and left it to the competent authority to provide a *reasonable* interpretation, that is, one in accordance with the spirit of the Convention.

It would be out of the question not to allow certain other exceptions to be made in connection with general police duties, national defence, the observance of health regulations, etc. For instance, the Contracting Parties would not be bound to ensure transit for travellers whose entry into their territory was prohibited on grounds of public health or safety, or the transit of goods the importation of which was forbidden as a measure of protection against diseases of animals or plants. The authorities in the country of transit could also take reasonable measures to assure themselves of the genuine nature of traffic in transit, and to provide for the safety of ways and means of communication. Free transit could not be insisted upon for immigrants whose entry into the country of destination is forbidden. Another exception must be made as prescribed in the Covenant itself in the case of regions devastated in the war.

As regards the application of the Convention in the event of grave national emergency, that is to say internal disturbances, strikes, famine or other troubles, and in time of war, the Contracting Parties would have the right within their territory to take the measures necessary for national security, whilst respecting as far as possible the principle of freedom of transit.

Though the Convention deals with the question of freedom of transit in time of peace, it also aims at maintaining this freedom, as far as possible, in time of war. In particular, it states that, in such an event, the Contracting Powers will maintain this freedom in so far as it is compatible with the rights and duties of belligerents and neutrals.

Freedom of transit implies *equal conditions of transit* for all the Contracting Powers. No distinction may be drawn with respect to *the nationality of persons, the flag flown by vessels, the origin, points of departure, entry, exit or destination, or the ownership of goods, mails or postal parcels, coaching and goods stock or other means of transport*. Preferential treatment, therefore, is not permitted, but this does not preclude differentiation of a commercial character, in so far as this may be considered legitimate on commercial grounds, within the frontiers of each country. The institution of tariffs tending to impede transit is forbidden; it is in fact inadmissible that a State, whose import and export trade is dependent upon transit across an adjacent State, should be made economically dependent upon the latter.

However desirable it may be to secure equality between *all* nations, and although

(1) The Commission of Enquiry on Freedom of Communications and Transit was held at Paris in October 1919, on the proposal of the French Government, under the chairmanship of M. Claveille, then French Minister of Public Works. This Commission was instructed, firstly by the Powers which had appointed delegates upon it, and subsequently, on February 13th, 1920, by the Council of the League of Nations, to prepare draft general international conventions upon transit, waterways and railways.

the Commission of Enquiry advocated this universal equality, we are at the moment dealing only with equality between the Contracting Parties. Nevertheless all other nations are free to benefit by it, should they wish to do so, by adhering to the Convention and assuming the responsibilities which it entails.

Even equality does not suffice to ensure freedom of transit in all circumstances. An obvious example would be the case of a State which possessed no merchant fleet and, for this reason, had but little interest in transit effected through its territory. Such a State could very easily impose prohibitive conditions upon transit, which might, it is true, be alike for all, but would hardly affect the State itself at all. For this reason the Convention reinforces the general principles of equality by more definite guarantees as regards reasonable conditions for transit traffic, including the charges to be levied.

The Draft Convention does not impose on the Contracting Parties any obligation which is not consistent with their rights and obligations as Members of the League of Nations.

As regards the relation between this Convention and special previous or subsequent agreements relating to transit, Article 10 of the Draft Convention provides that, generally speaking, all existing obligations and agreements are cancelled in so far as they are incompatible with the terms of the Convention. It further provides that for the future, the conclusion of similar agreements is only permissible in exceptional circumstances and when it can be justified by such a combination of special economic, topographical and technical considerations as, in the opinion of the Commission of Enquiry, is inseparable. The article also provides an opportunity for the signatory States to enumerate certain conventions which will still be kept in force. As regards existing conventions between Contracting and Non-Contracting Powers, there is nothing to prevent their remaining in force. In the future, however, no agreement relating to transit is to be concluded with non-acceding Powers which would not be permissible between Contracting Parties.

With reference to transit facilities greater than the minimum accorded by this Convention, it is laid down that such facilities will not be abolished if granted previously, nor will they be prohibited in the future provided they are granted in conditions compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties.

If disputes arise in regard to the application of the Convention, the Contracting Parties, before submitting them to the Court of International Justice, will have recourse to a *friendly settlement* by the Advisory Committee established by the League of Nations. The very elasticity of this procedure of conciliation will have the effect of making the Convention a living force. Should one of the Contracting Parties not comply with the finding of the Committee or the judgment of the Court, any other Contracting Party may apply to the Court for a ruling as to the steps which each of the Contracting Parties would be entitled to take.

The concluding articles of the Draft relate to the ratification of the Convention, its coming into force, the date of its application, the right to denounce it — which may be exercised after ten years — and its revision. At least once every ten years the Advisory Committee shall submit to the General Conference a report on the application of the Convention, and shall decide whether there is any need to submit the question of revision to the Conference.

This short statement will, I hope, serve as an introduction to the discussion upon the Draft Convention on Freedom of Transit.

The PRESIDENT (speaking in French). — The Conference will certainly wish me to tender its thanks to our Vice-President, M. Loudon, for the very clear and complete summary which he has made. He has brought out the novelty and originality, from an international standpoint, of the Transit Convention which is laid before you for your consideration. It is a document of the utmost importance, both in regard to relations between peoples and to the value of that concerted action which, as we know, is the object pursued by the League of Nations.

GENERAL DISCUSSION

The transit question is now open for general discussion.

M. TSANG-OU (China; speaking in French). — Before proceeding to discuss the Conventions which are before us, I venture to make a short statement on behalf of the Chinese Government.

The Chinese Government is anxious to seize the opportunity afforded by the assembling of the Barcelona Conference for the consideration of questions of great importance relating to freedom of communications and international transit, in order to express its strong desire to take part in the final preparation of the Conventions to be drawn up by the Conference. Its co-operation will be governed by the principles of liberty, equality and reciprocity, upon which is based the Draft Convention communicated to it by the League of Nations on September 20th, 1921.

The fact that China is a Member of the League of Nations not only demonstrates her keen desire to take part in all measures calculated to establish improved political and economic relations between all the Powers, but is also a proof of her firm intention to continue to apply the new and recently adopted policy of a closer understanding with other Powers.

China does not, however, disguise from herself the fact that, in her own case, the existence of numerous previous treaties with certain Contracting Powers will be a source of serious difficulties, which will require solution before the new Conventions can be brought into agreement with the provisions of these treaties.

The Chinese Government, therefore, confidently hopes that these Powers, animated by a spirit of equity, will afford China every possible help in introducing into these existing treaties the amendments necessary to enable the new Conventions to be put into application, and that the General Conference will use its influence in this matter to convince these Powers of the difficulties which the Chinese Government will encounter in carrying out the new Conventions.

I do not make this statement because China is in any way anxious to shirk these difficulties; on the contrary, she is inspired with a keen desire to take a full share in your efforts to promote international solidarity. This is the keynote of my statement.

May I be permitted to add a few words?

Would it not be advisable to appoint forthwith a special sub-committee to consider the difficulties which will be encountered by certain countries in applying the new Draft Conventions? This would clear the ground, and, in our opinion, the discussion of the articles would gain thereby in clearness and brevity. I think that by proceeding on these lines, instead of in accordance with diplomatic usage, each delegation would give a more sincere expression to its views.

The PRESIDENT (speaking in French). — The Chinese Delegation proposes that a sub-committee should be immediately appointed to consider the difficulties which will be encountered by certain States in applying the new Draft Conventions. It seems to me that such a sub-committee could only be appointed after the adoption of each Convention. I certainly think that directly a vote has been taken upon the Transit Convention it would be desirable to appoint a sub-committee to consider the question of the application, but I think that it would be difficult to appoint this sub-committee before the Convention has been formally adopted.

M. TSANG-OU (China; speaking in French). — I agree.

The PRESIDENT (speaking in French). — As soon as the first Convention has been adopted, a sub-committee will meet to consider and deal with the difficulties connected with its application. If there is no objection, this procedure will be adopted.

With regard to the statements made by the Chinese Delegate on behalf of his Government, due regard will be paid to them during the discussion, and they will be included in the Records. I would also point out that in the drafts laid before us, and

in the Covenant itself, it is laid down that account shall be taken of conventions concluded previous to those which will be concluded by the present Conference.

M. Sibille, the principal French Delegate, has informed me that M. Serruys, the expert delegate, has been specially detailed to follow the discussion, and that he will speak on behalf of the French Delegation during these debates.

The discussion will now continue. I call upon M. Alvarez, of the Chilian Delegation.

M. Alejandro ALVAREZ (Chile; speaking in French). — Before entering upon a discussion of the Draft upon transit,—the question which has been submitted for the consideration of the Barcelona Conference—I would point out that we are dealing with one of the most important and complex problems of International Law.

The complexity of the subject is in particular due to the fact that it has both a *technical and a legal* aspect. Jurists cannot frame satisfactory rules for the regulation of this problem unless they are supplied beforehand, by scientists and engineers, with the technical data which govern the question of communications.

There is another reason, partly political and partly historical, which helps to explain the complexity of the subject. Hitherto, in all matters appertaining to routes of communication, and especially to navigation on international rivers (see the Final Act of the Congress of Vienna 1815), the question before us has only been dealt with in the light of the individualistic tendencies which prevailed in the life of States at that time, and taking into account to the interests and conditions obtaining on the continent of Europe alone. It is not for us to criticise the authors of this settlement. In 1815 the territories of the New World—at all events those of Central and South America—were only just beginning to form themselves into independent States. During the nineteenth century, as these new political formations gradually developed under geographical and economic conditions very different from those prevailing in the Old World, they felt the necessity of settling some of these questions by agreements *inter partes* based on an outlook very different from that prevailing in Europe.

In the third place it should be remembered that technical improvements and the increasing development of discoveries affecting means of communication have further complicated the issue. Railways have been introduced, whereas rivers were formerly the sole means of reaching the interior of a country. Eventually the great war broke out, and now that it is ended a new era in International Law is beginning. Hitherto International Law had been based on the individualistic and jealously guarded principle of the sovereignty of States, but a tendency is now developing towards reconstruction on a basis of *international solidarity and co-operation*—principles which have found expression mainly during the last few years. In the framing of international legislation under this new régime, account is taken of the general interests of the whole body of States, rather than of the narrow and exclusive interests of each separate State. We must not, however, endeavour to push forward *too quickly, or too far*, along this new path. We are living in a time of profound economic disturbance and we must not try to crystallise in definite legal form to relations which have very likely not yet assumed their ultimate shape. Moreover, as a result of the world-war, national feeling is still very strong among the different peoples. We must therefore exercise prudence in making any innovations.

I have ventured to submit the preceding general observations because I feel that they give an idea of the factors which ought to govern the code of rules to be drawn up by this Conference. These rules must, in the first place, take account of the scientific knowledge now at the disposal of experts and of the uses to which is knowledge is applied by engineers to means of communication.

In the second place, the principles of treaty law, adopted by American States in this connection, should be borne in mind, in order that, by comparing these principles with those adopted in European treaty law, an understanding may be arrived at with regard to the general lines on which we should proceed. Where a world agreement is unattainable, we must content ourselves with *continental*, or even *regional*, or *inter partes* agreements, or with internal regulation on the part of each State.

A rapid survey of the ideas which have prevailed on the American continent, in the

settlement of questions of this nature will therefore not be without value. Almost at the outset of their independence, the States of Latin America enunciated two main principles either in their constitutions or in their systems of legislation :—

a) Freedom of communications and transit through their territory, and territorial waters, both sea and river, though in the case of their rivers some restrictions are imposed;

b) Equal rights for nationals and foreigners with regard to the acquisition and enjoyment of civil rights. The adoption of these two main principles has resulted in the attraction of immigrants and capital to our continent and has enabled trade and industry to develop.

The States of Latin America and the United States have met together in pan-American conferences, for the purpose of facilitating inter-State commerce. At these conferences, they first of all discussed, and subsequently attempted to introduce, a uniform system for the regulation of certain questions of great importance concerning transit, such as pan-American railways, the Customs regime, uniformity of consular documents, trade facilities, etc. At the same time, the States of Latin America were of opinion that many questions were not suitable for a general settlement and that they must be left to *inter-partes* agreements, more especially between neighbouring States, since neighbours could make mutual concessions which could not be extended to other States. Lastly, the Latin American States, both in their legislation and in the treaties concluded by them, have always reserved the right to apply their national legislation to transit traffic as regards fiscal and police regulations. The policy described has produced very satisfactory results,—in fact it may be confidently said that the States of America would not be prepared to renounce this policy and would not consent to bind themselves to observe general conventions which were incompatible with it.

I will not occupy your time any longer in attempting to show the merits of a very simple idea which I venture to submit to the Conference, namely that in the Conventions before us we should distinguish between the four classes of questions to which I have referred,—questions which can be settled by general agreement, and those which must be left to continental or regional agreements, and which must be left to be dealt with by each individual State. I am sure that, if certain amendments are introduced into the Draft submitted to this assembly, especially in regard to Article 10, we shall be able to prepare a document to which the majority of States throughout the world may accede.

M. LANKAS (Czecho-Slovakia; speaking in French). — I only venture to take part in the general discussion because I have had the honour to assist, from the very outset, in the preparatory work of the Commission of Enquiry and because I have represented a country which has found it necessary since the Armistice to take a very great interest in transit questions. I feel therefore that I am in a position to lay emphasis on certain articles which are deserving of special attention on your part. With regard to the first qualification which I have referred,—the fact that I took part in all the discussions of the Commission of Enquiry—I am aware, as also are all my colleagues, that the Convention on Freedom of Transit is the result of assiduous effort and of ripe reflection, and that the greater part of the articles are the result of compromises at which it was very difficult to arrive. Any attempt to introduce radical alterations into certain of the articles might endanger the whole Convention,—which, as I recently stated, the Czecho-Slovak Government is prepared to accept in the form in which it appears in the *Green Book* (1).

With regard to the Convention itself, I will for the moment confine myself to touching upon two aspects of it. It appears to me to be at the same time very inoffensive and very important. It is very inoffensive if we compare it with the pre-war situation. We all know that before the war the necessity for freedom of transit was

(1) *General Conference on Communications and Transit. Preparatory Documents.* This volume which has a green cover contains the draft texts prepared by the *Commission of Enquiry on Freedom of Communications and Transit* (see note p. 4) and the Report which serves as a preface to them, See p. 278 for the *Draft Convention on Transit*, and p. 283 for the *Report on the draft*.

felt by every State. It was taken into consideration in all commercial treaties; even if such treaties did not always explicitly refer to it, the principle at all events was universally admitted. The railway administrations, far from wishing to deflect transit traffic to another country, made every effort,—as the Swiss Delegate proved in the Commission of Enquiry—to obtain as large an amount of this traffic as they could. The war intervened and completely altered the situation. Unfortunately the methods and customs introduced during the war still persist. We know that the railways of Central Europe are not at the present time encouraging transit traffic. Let us hope that the Convention, which we are now considering, will lead to a return to pre-war conditions.

With regard to the Convention itself, there are three main questions at issue : —
Am I to have freedom of transit?

For how long am I to have freedom of transit and under what conditions?

What will this freedom of transit cost?

These are the three questions which we had to consider in the Commission of Enquiry.

With regard to the first question, I have already said that I never entertained any doubt but that freedom of transit would be obtained, and that it would be universally granted. In my opinion, however, we must do more than merely obtain and grant formal recognition of the principle of freedom of transit. Article 2 of the Convention explicitly lays down that : *Subject to the stipulations contained elsewhere in this Convention, the measures taken for the regulation and execution of traffic in transit shall facilitate the free transit...* Our task, therefore, is not merely to guarantee freedom of transit, but, what is more, to facilitate it in every possible way.

I would now draw your special attention to the second question : *For how long am I to have freedom of transit and under what conditions?* Will freedom of transit cease just when I need it most,—in other words, in time of war? Mention is made of “emergency”. You will realise that this is one of the most important points in the Convention. The clause dealing with it is, as a matter of fact, the result of a compromise. I think it would be very dangerous to meddle with it.

The last of these three questions concerns the cost of transit. It has been dealt with by our Secretary-General in the *Green Book*. The point is to obtain the best possible terms for transit traffic by selecting the least expensive route. The Commission therefore devoted many lengthy meetings to an endeavour to decide what tariffs was to be applied to transit traffic. I am bound to add that the wording which we selected is again the result of a compromise.

I should like to explain to you our reading of the clause in Article 4 dealing with charges. Mention is made of *reasonable tariffs*. This idea : *common sense* was introduced into the Peace Treaty by the English Delegates. In Czecho-Slovakia we do not use this expression, and therefore we do not readily grasp exactly what it means. We have had some difficulty in explaining its meaning to our fellow-citizens. For this reason, it may perhaps be advisable to explain to you how the Government of the Czecho-Slovak Republic and our railway administration understand the word *reasonable*, and the standpoint from which they regard the question of tariffs as applied to transit. In our opinion prohibitive tariffs must not be introduced into transit traffic even under the disguise of certain obscure clauses or formulas in the form, for instance, of special tariffs applying only to goods delivered at stations in motor-lorries. It follows therefore that a reasonable tariff is one which opposes no direct or indirect obstacle to transit traffic and applies normal rates, with the possible exception of certain special taxes imposed for the protection of various branches of national industry, and of certain special tariffs which may be fixed below cost price, and the benefit of which the country concerned cannot extend to transit traffic.

This is our interpretation of the provisions of Article 4, and I think that the majority at any rate of the delegations which took part in the work of the Commission of Enquiry regard it in the same light. Would it not, therefore, really be both advisable and reasonable to leave this article unaltered and adopt it as it now stands?

If you will allow me, I would like to define the relationship between our Convention and the Bern Convention. There is a tendency to believe that the Bern Convention is quite sufficient to guarantee freedom of transit, and that this freedom was effectively

guaranteed before the war. I would remind you that, as a matter of fact, the Bern Convention only deals with relations between railways and the public. In addition, the obligation to undertake transport is naturally extended to all States which signed the Convention. This implies, for instance, that I have the right to hand over to the Czecho-Slovak Railway at Prague a consignment of goods, together with a way-bill, for despatch to a station in Roumania, and States situated on the route, if they have adhered to the Bern Convention, are bound to carry out the transport. Another clause, however, of the Bern Convention lays down that this transport obligation is only valid if the normal and ordinary means of transport are sufficient for the purpose. Thus the Bern Convention itself contains a limitation of the transport obligation,—in other words, it establishes a restriction upon freedom of transit. The Bern Convention, therefore, does not suffice to establish freedom of transit. Moreover the application of this Convention, which only deals with transport by rail and with purely technical questions, is subordinated to other legislation, more especially Customs regulations, and Customs regulations often seriously impede freedom of transit.

In conclusion, I venture to express the hope that the Convention on Freedom of Transit will be adopted without any considerable modification, and that the need for such modification will not be felt in the future.

The PRESIDENT (speaking in French). — I beg to thank the Czecho-Slovak Delegate for his interesting statement.

The meeting adjourned at 1.15 p. m.

EIGHTH MEETING OF THE CONFERENCE

(Monday, March 14th, 1921, at 4 p.m.)

GENERAL DISCUSSION (CONTD)

The meeting opened with M. Hanotaux, President, in the Chair.

GENERAL DISCUSSION (Contd)

M. DE WALTER (Hungary; speaking in French). -- On behalf of the Hungarian Government, I beg to thank you for the courteous invitation extended to us to take part in this Conference, which is of very great importance for Hungary, because our railways are destined by their geographical situation to assure international transit between the Serb-Croat-Slovene State, Greece, Bulgaria, Roumania and Turkey on the one hand, and the Western States on the other. The Royal Hungarian Government is convinced of the necessity of assuring, by means of a number of general provisions, reciprocal freedom of transit and the restoration of pre-war international traffic. It is ever ready to lead its co-operation for this purpose. The Royal Hungarian Government has on many occasions given proof that it is actuated by the liberal ideas upon which the proposals submitted to us are based. It has concluded conventions, based on similar principles, with Italy, Poland, Germany and Austria, in regard to railway traffic, and it hopes to be able shortly to conclude an agreement with its neighbours, Roumania, the Serb-Croat-Slovene State and Czecho-Slovakia. In conformity with the preliminary negotiations conducted in Paris in the months of July and October last, the Royal Hungarian Government concluded, in December, a Convention with Roumania and Austria with reference to the running of an express train between Vienna and Bucharest in connection with the Paris—Vienna and Ostend—Vienna trains-de-luxe. This train began running on February 17th last. At the same time the three Governments agreed to re-establish goods traffic as from January 1st last. On account of certain technical difficulties raised by Roumania, the Hungarian Government has not been able to conclude this Convention in its entirety. Apart from the negotiations undertaken by the Government, the Royal Hungarian State Railways have entered into negotiations with the Czecho-Slovak and Serb-Croat-Slovene Railways for the purpose of arranging the technical details connected with the resumption of traffic. So far, however, negotiations on this subject have only led to a partial resumption of traffic; in regard more particularly to the Serb-Croat-Slovene Railways, it has only been possible to agree upon the general policy to be followed in the settlement of outstanding questions.

The dearth of coal preventing the re-establishment of both internal and transit traffic in Hungary, the Hungarian Railways only have coal reserves sufficient for one day, a fact which I have already had the honour of bringing to the notice of the Austrian Reparation Commission at a meeting held in Vienna. Since the Hungarian Railways are obliged to restrict their internal traffic, they cannot provide for transit traffic unless the States despatching the goods place sufficient coal at their disposal to enable them to effect the transport. One possible consequence of this state of affairs would be that the neighbouring States, in their turn, might stipulate that Hungary should provide coal for Hungarian transit traffic, and Hungary, not being able to comply with such a demand, would find her products excluded from international traffic.

I trust, however, that this eventuality will not arise. It follows from what I have already said that freedom of transit is, in practice, inseparable from the question of coal-supply, and that, until this question is settled, any guarantee of freedom of transit is bound to be purely theoretical.

Another very important question is that of rolling-stock, and especially locomotives. Since this question is a subject coming within the scope of the Reparation Commission in Vienna, I shall only touch very briefly upon it.

Finally, I venture to call the attention of this Conference to the fact that the majority of the stations situated on the frontier are not adapted for the development of international traffic, since they are not provided with warehouses, locomotive sheds, or other equipment indispensable for an international transit service. In order to meet the requirements of international transit traffic, it seems essential, in the interests of all, that neighbouring States should, as soon as possible, proceed to select the stations which would best serve as common transit stations, regardless of their situation upon the territory of any particular State.

With regard to the application of transit tariffs, though I have no wish to make any definite suggestion to the Conference, I venture to call your attention to the provisions contained in a treaty concluded between Poland and Hungary.

The Contracting Parties have agreed that no distinction shall be made on the railways between the inhabitants of territories belonging to the Contracting Parties, for the purposes of passenger and goods traffic, with regard to despatch, transport charges, and taxes levied in connection with transport services.

Similarly, and subject to the same conditions, goods consigned to Hungary, or via Hungary to a third State, will not be treated less favourably on Hungarian Railways as regards despatch, transport rates, and taxes levied in connection with transport services, than similar goods of national origin, or similar goods consigned by a third State to a destination in the same direction and on the same line. The same principle will hold good on the railways with regard to goods despatched from Hungary to or via a third State.

This principle will be mutually applied in the case of goods transported across the frontier into the territory of the other party and reforwarded from there by rail. In such cases, no distinction will be made between shipping companies of the two Contracting Parties, especially with regard to transshipment dues.

I am well aware that I am only here as the guest of this assembly; it therefore only remains for me to express to you once more my sincere thanks for having so courteously accorded me a hearing.

M. SERRUYS (France; speaking in French). — I need hardly refer to the spirit in which the French Delegation approaches the question of freedom of transit. If the regime of freedom of transit which France has always applied were not in itself incontestable evidence of the attitude of the French Government, I need only remind you that the first discussion of the question which forms the subject of our debate was undertaken in October, 1919, at the invitation of the French Government. France, however, had no special reason of her own instituting an immediate discussion upon the subject. Provision was made under the terms of the Covenant itself for certain exceptions to the principle of freedom of transit in respect of France, by a clause to the effect that the special requirements of the regions devastated during the war of 1914-1918 should be taken into consideration. France, though she has not renounced her right to benefit by these exceptions, has mainly concerned herself with the effective application of the principle. The Treaties of Peace, moreover, provided France with guarantees regarding transit traffic across the countries of Central Europe, which cannot be modified by any international statute. In view of the fact that she profits by certain exceptions provided for under the terms of the Covenant and by a number of explicit guarantees embodied in the Treaties of Peace, France might well have abstained from taking the initiative in this matter, especially as she is called upon to bear a larger share of the burden of transit traffic than other countries. Certain countries, in fact, owing to their geographical position, derive most of the benefit from transit traffic, while other countries bear the burden. France, situated at the western corner of the continent of Europe, is amongst the latter, and is therefore destined to bear a heavy share of this task, which is certainly made more difficult in

her case owing to the ravages of the war; for this reason she would have nothing to gain by adding to the burden imposed. The action of the French Government, in inviting all the Members of the League, after the signing of the Peace Treaty, to study the best means of assuring freedom of transit, was entirely due to a desire to give evidence of its wholehearted adherence to one of the fundamental principles of the Covenant.

The Draft Convention before you is the direct outcome of the discussion at Paris, and the contents of the *Green Book* are based upon this discussion. A glance at the historical survey contained in the *Green Book* will suffice to show that widely differing systems were considered at the Conference, and that the opposing theories were brought into comparison in their most extreme form. Upon many points the Draft Convention in the *Green Book* constitutes a compromise between these systems and theories; sometimes, on the other hand, one of the theories under consideration has been adopted in its entirety; again, certain fundamental questions have been completely omitted, thus giving the impression that they were not even considered.

I will cite one example only. There are three methods of giving effect to the obligation undertaken by Members of the League in Article 23 of the Covenant. In the first place, by means of appropriate national legislation on the part of each State; secondly, by means of concerted action in the form of a general recommendation; thirdly, by means of an international convention. The conference of Rome considered these three methods in detail. The *Green Book*, on the other hand, lays the Draft Convention before you without any reference to these various means of applying Article 23, and it does not appear that the question was ever raised as to which would be the preferable method, or whether one or other of these methods should be applied to some particular aspect of the problem as a whole. The conception of a Convention is the only one which has survived. Nevertheless, the scheme as contained in the *Green Book* constitutes a complete and systematic statute for an international regime for transit traffic. It constitutes a code remarkable for its precision and rigidity, and affords a solid groundwork on which to base our labours. I will not cast any reflection upon this Draft Convention by pointing out that these very qualities are to a certain extent calculated to imperil its success; we must however bear in mind that, in the case of a highly-systematized and rigid international statute, which pays no regard to national legislation, nor, above all, to the special conditions prevailing in certain countries, there is a danger that, even if it is unanimously approved, such approval will be purely theoretical. Unanimity was attained at the Hague in 1902, with regard to the unification of legislation relating to bills of exchange and bills to order; but this international Convention has never been ratified. If this Conference concludes an international convention upon transit, under the auspices of the League of Nations, it must be of such a nature that all the signatory States will be able to ratify it. For this purpose, it is both necessary and sufficient that the Convention should be in harmony with the majority of national legislations, that it should, generally speaking, respect their autonomy and, more especially, the contractual liberty of the Signatory Powers; and that, in particular, provision should be made for such exceptions as may be justified either by the economic, topographical and technical conditions prevailing in certain States, or by the stage of development reached by their communications and commerce.

The French Delegation, though thoroughly in favour of the principle of freedom of transit, and also of the widest possible application of this principle, feels bound to recognise that special treatment must be afforded to certain countries,—distant possessions dependent upon Contracting Powers, or isolated territories entrusted to them for administration. The French Delegation for its part considers that adequate account should be taken of the present state of affairs in regard to such territories. This may be done either by enumerating previous agreements which it is advisable to maintain in force, as provided under Article 10, or, in the case of certain countries, by making provision in a special clause for the gradual and progressive application of the provisions of the Convention.

In addition to ensuring that the statute embodying the regime which we are about to introduce will be ratified by all the Contracting Parties, we must, in the preparation of this statute, allow sufficient latitude to render possible the subsequent accession

of other States belonging to any continent. Above all, since the question at issue is the progress of all mankind, the ideas and systems of the Old World must acquire sufficient elasticity to adapt themselves to the ideas and the conditions prevailing in the New World.

Finally, in order to be effective, the Convention which is to form the subject of our discussions must not only be calculated to secure the support of all nations throughout the world, but, further, the support of each must be given singleheartedly and each must be able, either to give an assurance that it will respect the Convention in all circumstances, or make reservations with regard to the circumstances in which the Convention will cease to apply. The French Delegation is keenly desirous that a Convention should be concluded in a thoroughly equitable and loyal spirit; it is confident that a Convention concluded under these conditions would be applied in a similar spirit. The League of Nations provides two distinct guarantees for the attainment of this result,—firstly, a system for the friendly settlement of disputes by means of the Advisory and Technical Committee or some other body duly authorized by the Council of the League and, secondly, a tribunal for judicial settlement, based upon law and equity,—I refer to the International Court of Justice. These general remarks will suffice to explain the amendments which we propose to submit for your consideration. The French Delegation, in presenting these amendments, is consistently following out the idea which led the French Government to summon the Commission of Enquiry at Paris, namely, to facilitate for all States the performance of an international duty, with regard to transit traffic, upon which the peace and prosperity of all nations is very largely dependent.

M. NEUJEAN (Belgium; speaking in French). — As I had the honour to inform Jou at our first meeting, the Belgian Delegation is extremely anxious for the success of the Draft Convention now before the Conference, and for all possible difficulties or obstacles to be removed from its path. It is in this spirit that the Belgian Delegation approaches the subject of our discussion. We feel compelled to point out, however, that the Draft Convention is incomplete. It accords rights to countries from which transit traffic originates, but affords no corresponding guarantee to countries through which the traffic may pass. This point, to which we attach great importance, was brought up by the Belgian Delegate during the preliminary discussions of the Treaty of Peace, and we still maintain the same view. The Belgian Delegation, however, being extremely anxious to arrive at a reconciliation of views, is prepared to vote in favour of the draft now under discussion, but on the understanding that by so doing it does not in any way modify the interpretation which we have placed upon Article 23e of the Covenant. It appeared to us essential to submit these observations at the outset of the discussion.

M. MIRZA HUSSEIN KHAN ALAI (Persia; speaking in French). — Now that we are about to discuss the Draft Convention upon Freedom of Transit, I shall be glad of your indulgence for a few moments in order to explain to you briefly the supreme importance which Persia attaches to this interesting subject. I am afraid that the majority of the delegates at this Conference are still somewhat inclined to associate Persia mainly with its glorious past and with the *Arabian Nights*. Though the time is now far distant when the question was asked "How is it possible to be a Persian?", it seems to me that, at the present time, the importance of Persia's geographical position, the circumstances which have hitherto delayed her economic development, and the very considerable services which she is called upon and is prepared to render for the welfare and solidarity of mankind, are not adequately understood. I shall not therefore be wasting your time if I attempt to throw a little light upon this part of the world and to brush aside the mirages with which eastern countries are so often enveloped.

I have been instructed to inform you that my Government welcomed with the keenest interest the opening of the Conference for the purpose of considering the important question of communications and transit. My Government is very glad to have been invited to take part in this Conference, for, in its opinion, a united effort

on the part of all nations is the only means of re-establishing normal trade exchanges and at the same time of restoring a healthy circulation, the lack of which was so deeply felt by mankind during the war. Persia has from time immemorial played a very important commercial and economic rôle in the world, not only by reason of her natural wealth, but also and more particularly by reason of her geographical position, which made her the principal trade route for all caravans plying between the West and East, thus bringing the countries of central Asia into contact with those of the Mediterranean and Black Seas. Persia, animated by the remembrance of her past, and freed, by the very fact of her admission as a Member of the League of Nations, from the series of treaties, conventions, concessions, acquired rights, etc., which restricted her freedom of action, is firmly resolved to develop her communications and to take part with all the means at her disposal in the economic restoration of the world. She trusts that the obstacles which have hitherto paralysed her efforts and deprived her of the means of free communication with foreign countries will now, under the auspices of the League of Nations, be removed once and for all. The economic development and the exploitation of the natural resources of Persia have been arrested for more than a century by the repressive policy adopted towards her. In consequence of this policy, she has been compelled on several occasions to give up the idea of constructing railways and of granting concessions for the construction of ports, roads, etc., to nationals of other countries; it prevented the transit of foreign goods, destined for Persia, via the Caucasus (the most rapid means of communication), and an attempt was even made to interfere with the postal service between Europe and Persia. The same policy withheld the right of free navigation on the Caspian Sea from Persian vessels, and imposed on Persia a customs tariff which was all to the advantage of the manufactures of one country and to the detriment of the produce of other foreign countries. Persia's position has been seriously affected by the invasion of her territory during the war and she has suffered enormous losses for which she has hitherto received no reparation. It is therefore not surprising that she is now undergoing a grave economic crisis, that she has received a serious setback and lacks modern equipment.

The principal task of the Persian Delegation, therefore, is to follow closely the discussions of the Conference and to keep its Government informed of the resolutions and schemes adopted, in order to enable it to study them and to conform to decisions which will undoubtedly be inspired by the principles of liberty and of equal respect for the rights and interests of all nations. It is also my duty to urge the adoption of a principle which I am glad to say is embodied in the text now before us,—the principle of free transit for goods consigned to Persian markets from all foreign countries by any route, more especially by those routes which are still closed. Our customs legislation, however, makes provisions for free transit, and free navigation upon our most important river, the Karun, has been accorded for the last forty years to all flags. I shall presently have the honour of submitting to the Conference; through the Secretariat, all available figures and data regarding the present condition of our transport system. I shall attach thereto a map of Persia and neighbouring countries, in order to bring out more clearly the peculiar geographical situation of my country,—a situation which encourages the hope that Persia will not be forgotten when the time comes for selecting representatives for the Advisory and Technical Committee.

With regard to the immediate future, Persia, which is rich in liquid fuel and coal seams, is anxious to reconstruct the ancient trade routes utilised for centuries past by trading nations, for the purpose of commerce between Europe and Asia and in order to increase the prosperity of all nations. We Persians whole-heartedly participate in the generous ideas which led to the summoning of the Conference on Communications and Transit; it is our earnest desire that the policy of the open door may be adopted in our economic relations, and that peace may be re-established amongst our neighbours, so that the difficulties now existing may at length disappear.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — Our distinguished President in his memorable speech has shown us with striking clearness just how far we may proceed in our resolutions for the welfare and progress of mankind. Humanly

speaking, the ideal condition of things would undoubtedly be a single and universal State with a single government. Since, however, it is not the task of this Conference to create a *City of the Sun* or a Utopia, we must content ourselves with the relatively humble and incomplete League of Nations, of which we form part. It has sent us hither in order that we may endeavour to find means to render life upon our planet rather more supportable and agreeable, by facilitating communications and trade between the various nations. If in the course of our work we succeed in doing anything, no matter how little, to prevent, or at any rate to hinder, the worst of all evils—war—we may return home satisfied with the results of our work. It is our duty to pursue our endeavours to the utmost limits compatible with the necessity of reconciling our guiding principles,—internationalism and the solidarity of mankind,—with the independence, sovereignty and private interests of the States which desire to form part of this League. This is a very difficult task.

The Kingdom of the Serb-Croat-Slovenes has gone even further in this direction;—more especially Serbia, which has spared no sacrifice to attain the ideals aimed at by mankind. Henceforward dire necessity and bitter experience compel us to confine ourselves within these limits. We are keenly interested in the success of this Conference, and we therefore hope that all the Conventions adopted here will also be ratified by all the Members of the League; failing such ratification they will be inoperative. We regard it as most important to prevent the impression that a number of super-States—to quote the expression used by our distinguished President—exist within this League, an impression which pre-supposes the existence of subordinate States. I am well aware that equality is an ideal which is, humanly speaking, unattainable, and that the scientists who have invented wonderful methods for calculating physical dimensions have not been able to invent any means of calculating moral dimensions—if this were possible, perhaps we should not be assigned to such a humble position amongst the nations. The great nations must have a larger share of influence than the small in the decisions taken by the League of Nations, and also in its organisations. For the attainment of this object, however, there is no necessity to exclude the small nations altogether. It is our duty to approach as nearly as possible to the ideal of equality and to deviate from it as little as possible; above all it is our duty to avoid arousing any suspicion on the part of small nations that they are being treated as inferiors by the great nations. If this suspicion were aroused, the noble institution in which so many glorious hopes are centred could not possibly survive, even amongst those who took part in its creation. Unfortunately, ever since the outset of the Peace Conference at Paris, it has been found impossible to avoid giving this impression, and the small nations have often had to submit to the dictates of the great nations; the latter have decided their fate without even according them the right to take part in such decisions;—I refer to allied nations who have sacrificed all their wealth and shed their blood in a just and holy cause. Some Members of the League of Nations are represented neither upon the Council of the League, nor upon the various committees, and will perhaps never be represented upon the Permanent Communications Committee which we are about to elect. In short, there are nations who have not even a single official on the Secretariat of the League. If the League is to be properly consolidated it is absolutely essential that every Member should be accorded proportionate representation in it, and that, as far as possible, no Member should be excluded from any of its institutions. Any reasons of economy which may be advanced against the adoption of these principles do not constitute a valid objection in the case of an organisation for the promotion of peace amongst nations which have spent hundreds of milliards upon war,—that is to say for the restoration of peace. After passing through so many vicissitudes, it is only natural that we should bear in mind the principle of *nil de nobis sine nobis*. We are firmly resolved to abide henceforward by this principle. This does not mean that our country will not in the future do all in its power to fulfil its duty towards mankind, and that it will not make every sacrifice which mankind can justifiably require of it. Our country feels that it is a part of humanity and that for this very reason it also has duties toward itself. Henceforward, however, it will judge for itself whether the sacrifices required of it are really necessary for the welfare and progress of mankind.

We unhesitatingly accept the principle of freedom of communications, freedom

of transit, free transport by rail and a free regime for sea-ports. The sublime word *Liberty* invariably produces a magical effect upon our country, even when the question at issue is not one of moral or political freedom but of material and economic freedom. Our country will freely accord all these privileges to its neighbours and to all Members of the League, in spite of the fact that, of all countries in the world, ours is the one upon which its neighbours make the greatest call in connection with the transit of their imports and exports, while we ourselves require nothing from them, and also in spite of the fact that the Peace Conference has left us, who possess so many natural harbours, without a single port connecting the interior of our country with the sea by means of a standard-gauge railway. The advantages which we shall in this way afford to our neighbours and other Members of the League of Nations are incomparably greater than those which we shall ourselves derive from the arrangement. Our country, situated as it is between the Danube (which is the principal commercial artery of the Continent of Europe) and the Adriatic, possesses one of the most advantageous situations in the whole world, from a commercial point of view. A large portion of the trade of Czecho-Slovakia, Austria, Hungary, Poland, Roumania and Bulgaria has to pass through our territory. The exports of the great industrial States consigned to these countries must also pass through our territory. We venture to hope that the granting of all these privileges without any equivalent advantages for us will not destroy our budding industry by encouraging the development of a merciless competition.

The League of Nations, moreover, should not forget that, of all countries, ours was most severely tried by the war, and that our communications are in such a condition that all the conventions adopted by this Conference will be useless, as far as we are concerned, unless our means of communication are repaired, and unless those who have destroyed or damaged them carry out the reparation laid down by the Treaties of Peace. I must therefore state that we shall be unable to ratify the Conventions concluded by this Conference unless the Peace Treaties of Versailles, St. Germain, Neuilly and above all that of Trianon, are ratified by all the signatories.

I give notice of a number of amendments—dictated by the preceding considerations—to the various Draft Conventions before us and, in particular, to that upon transit, which we are now considering.

Sir Louis KERSHAW (India). — It may perhaps interest the Conference if I explain very briefly how this Draft Convention is regarded by another Government in Asia. It is perhaps the more desirable that this explanation should be given, since the Commission which prepared the Draft Convention did not contain a representative from India, and the Commission necessarily was not fully acquainted with the special conditions of transit in that country. The main transit routes of India link the sea-ports with a considerable number of countries on its land frontier, with Persia on the west, with Afghanistan, with Russian and Chinese Turkestan, with Nepaul, with Thibet, with China and with Siam. In so far as the Draft Convention applies to this trade, I am glad to be able to say that my Government earnestly desires to give effect to the principle of freedom of transit. This, I need hardly point out, would greatly facilitate international traffic with a number of large and growing markets in Asia.

There is, however, one small difficulty, connected with the French and Portuguese settlements in India, which stands in the way of complete acceptance of the Draft Convention. The trade with the French and Portuguese settlements is not of great importance, but if the provisions of the Draft Convention were applied without modification, serious administrative difficulties would be caused, not only to the Government of India, but also to the Governments of France and Portugal. I do not propose now to describe these difficulties, as I hope at a later stage, after consultation with the Delegations of France and Portugal, to be permitted to present for the consideration of the Conference an amendment designed to remove the difficulties. I think that I can go so far as to say that the three Delegations agree in principle that in applying the Convention it is desirable to exclude these small territories. All that is necessary is to devise some form of words to meet the case. I have every confidence

that some formula will be found which will be acceptable to the three Governments concerned and also to the colonies.

M. RESTREPO (Colombia; speaking in French). — As the representative of Colombia I listened with great interest this morning to the remarkable statement which was made by Professor Alvarez, the distinguished representative of Chile, but which referred to the policy of Latin America as a whole. In my capacity as representative of Colombia, I willingly associate myself with him in the statements which he made, in so far as they express the most liberal aspirations of Latin America, and testify to our desire for a unified system of communications and transit, whereby all persons and their goods, all the products of industry, every organisation for mutual aid and every administrative service, will be freed from the restrictions, charges and prohibitions which at present encumber them. I much regret, however, that I cannot associate myself with him in regard to the restrictions and differentiations based upon geographical arguments, which are embodied in certain parts of his statement. Colombia does not desire to have two separate policies for communications and transit,—one governing her relations with American States and the other her relations with Europe, Asia and the rest of the world. She is prepared to go as far as any other country in regard to this matter, thus maintaining the most sacred traditions of her domestic and external legislation, as embodied in acts of world-wide importance, such as the law of April 5th, 1852, establishing complete freedom of navigation for vessels sailing under all foreign flags upon all the rivers and waterways of the country; the concessions granted by the Colombian Government to various United States and French Companies for the construction of the Panama Canal, and the Treaty of 1846 with the United States of America, by which customs duties were abolished in the Isthmus of Panama during the whole period that Colombia actually controlled this territory.

In conclusion I may say that Colombia hopes that the decisions adopted by the Conference will be as comprehensive as possible.

M. HANSEN (Sweden; speaking in French). — In my capacity as representative of a country which, owing to its geographical position and great length, is bound to play an important part in transit traffic, I venture to submit a number of general observations before the Conference proceeds to examine the Draft Convention on Transit.

In the first place allow me to remind you that Sweden, by reason of its length, which exceeds 2,000 kilometres, and also its geographical position, lies between large portions of western and eastern Europe. It is far from Sweden's intention, however, to hamper and place obstacles in the way of communications; on the contrary, she is anxious to develop and facilitate them. Our country has for a considerable period played a very important part in transit traffic, and her importance in this respect has continued to increase during the last few years. As commercial relations with Russia are gradually re-opened, and as the new Baltic States develop their economic resources, the importance of Sweden's position in transit traffic will continue to grow.

Sweden has devoted considerable pains to perfecting her means of locomotion, in order to be in a position to meet the requirements created by recent developments. She is at the moment engaged in an attempt to solve a number of problems of far-reaching importance. We are devoting our efforts at the moment to establishing modern and direct routes between Sweden and England on the one hand, and between Sweden and countries east of the Baltic, on the other. We hope that this improvement in means of transport from west to east and vice versa will also result in the development of our commerce and industry, and will lead to the establishment of closer relations with every part of the civilised world. It is not, however, entirely from this standpoint that Sweden regards the important question now occupying the attention of the Conference. Sweden possesses considerable natural resources, more especially in forests and iron mines. It is to the interest of countries which have not such resources at their disposal that the raw materials essential for their industries should be transported to their destination by the most convenient route. We are therefore prepared to do our utmost to facilitate a comprehensive solution of the important question of free transit.

As the discussion proceeds, I shall venture to make certain comments of a special character and not possessing any general significance, with reference to various articles of the Convention. I felt, however, that it was advisable to indicate by this short statement that Sweden is in full agreement with the generous principles and new ideas which are to be embodied in a concrete form in the Convention on Transit.

M. PERIETZEANO (Roumania; speaking in French).— I crave your permission to make a few brief remarks with reference to the Convention now under consideration, and would, at the outset, request you not to draw any conclusion from what I am about to say to you until you have heard me out. I am afraid that you may accuse me of retrograde tendencies, whereas I simply wish to consider certain points of a scheme which we are all anxious to approve; for this reason I beg you to reserve your judgment.

The first question which arises is: — What exactly is the right of transit and whence is it derived? It is for us to consider whether this right is really sufficiently logical, natural, effective and legitimate to obtain unanimous recognition on the part of an assembly like the present, which includes such a large number of able and distinguished members. I would emphasize the fact that “consideration” does not imply “opposition”. Let us reserve judgment. In the first place I would point out that the right of transit is not the right of way which is provided under the civil code with reference to enclosed property. It is the right of taking the shortest cut through any property whatever in order to shorten the journey, instead of going round by the public road. Such a right does not exist in private law. It is so entirely natural that a person having no exit opening upon the road should be able to compel his neighbours to provide him with one, that this principle is recognised by all the legislative systems of the world,—at any rate by those of civilised peoples. On the other hand, the right of passing through the property of others, because such passage would shorten the journey, and not because there is no other means of reaching the destination, does not exist in private law. Does this imply that nothing which does not exist in private law should not exist in international law? Certainly not. Moreover, there is good ground for considering whether this principle should not be also introduced into private law.

At this point, however, another question arises. It is generally held that individual interest must give way to general interest. This is a remark which is so often made that its meaning is rarely considered, but there is a good deal to be said on the point. There is always a certain amount of conflict between individual and general interest. Would it be true to say that individual interests should be sacrificed in all cases? If this were so, Trotzky and Lenin would be justified, and all rights should be in the hands of the community, the individual retaining none at all.

On the other hand, narrow and rabid individualism, and ultra-egoism which takes no account of general interests,—unreasoning egoism, in fact—are obviously quite as unacceptable as communism. The two extremes meet, as is the case in most problems. If we assume, however, that individual interests should disappear altogether before general interests, and if we are prepared to go as far as rabid communism, the interests of the individual will be completely absorbed in those of the community. A whole series of gradations exists between the one extreme, in which individual are sacrificed to general interests, and the other extreme, in which general are sacrificed to individual interests, and the reconciliation of these two extremes depends upon the skill in these matters of our governments and legislatures. What is the reason of this? Egoism is the cause of disputes, misfortunes, wars and destruction; but it is also the source of competition, progress and civilisation. We must recognise that it has its good points, and I should not care to live in a country in which egoism had completely disappeared, any more than I should care to live in a country in which egoism was supreme. For these reasons, in adjusting the balance between rabid egoism and equally rabid communism, we must consider how far it is desirable to proceed in sacrificing individual to general interests.

What is the end and aim of all this? There are some countries which for centuries have enjoyed the most precious possession which a nation can have,—liberty; they have developed, struggled and suffered, they have sacrificed themselves for the liberation of others. The country which I represent is one of those which has just gained its freedom; though it was already a free kingdom, its liberty was such that I prefer not to

speaking of it. We are therefore a new country,—a country which has only just begun to enjoy liberty in the true sense of the word, and you must not be astonished if, after having suffered for centuries from hypocrisy and deceit, we accord a somewhat timid, possibly even a somewhat hesitating reception to a principle to which you great nations, who have long enjoyed your liberty, are so accustomed that you will perhaps regard us as retrogressive and uncivilised if we retard somewhat the introduction of these liberal principles. We are, nevertheless, fully prepared to accept them, for we feel that they will constitute a real step forward. We too have done our duty and made sacrifices; but these sacrifices would certainly have been in vain without the support and aid of great and generous nations such as England, France, Italy, the United States of America, Japan and all the other countries which took part in the great war from which our liberty has sprung. At this point, I ask myself whether this is really a natural right, whether it is truly just, and whether it is a benefit for us and for all.

When I say “I ask myself”, I must beg you once more to remember that the sword has a twofold meaning. My ideas are based upon my studies in France. I myself am satisfied, but what will be the views of my fellow-countrymen who have remained at home? They have not had the advantage of such study; they have been steeped in lies for fifteen years. I must have an opportunity of convincing them that what I have come here to do is for their good, for they are not so easily convinced as other nations of the merits of these new ideas of liberty, and it will not be easy to persuade them to lay aside the weapon which lies ready to their hand, and with which they are fiercely defending the advantages gained at such a heavy cost. Having said this, I have no wish to arouse your misgivings. On the contrary, I am in a position to say that the Roumanian Government is in favour of freedom of transit. I make this statement expressly, because my recent remarks may perhaps be liable to misconstruction.

But what is transit? It is the right to pass through a country. This right implies equal treatment for all. Brown must not be accorded different treatment from Jones. But need this question of transit become a question of protection and free trade? This is the question to which I require an answer. I have no intention of discussing the problems of protection and free trade, for you are already acquainted with them. In the words of a well-known paradox: “A tunnel is dug,—and passage through it is barred by planting a policeman at the entrance”. But this is only a paradox. When an article is manufactured it is meant for a certain purpose and it is not intended to be used for every conceivable purpose. For instance, a knife is made to cut, but is not made to cut throats. A tunnel is dug for the passage of goods; this does not mean that goods of every possible kind must be allowed to pass through it, and that the mere fact of its existence entails freedom of import and export. Nevertheless, we must deal with this question of protection and free trade. It raises a problem to which reference is made in the Convention on Waterways, and which is also referred to, but to a lesser degree, in the Convention on Railways; no mention at all is made of it in the Convention on Transit, and some explanation is therefore necessary. Must equal treatment be accorded to transit traffic and to imports? Must there be equal treatment for transit traffic, imports and local traffic? Must there be equal treatment for transit traffic, local traffic and exports? These are all widely differing questions. What constitutes equal treatment with reference to transit traffic? Equal treatment implies that the country of transit must remain neutral in that struggle in foreign markets in which other countries are engaged. I must admit that from a strictly legal point of view I do not understand the situation. Why should I remain neutral? At Constantinople, for instance, four or five countries are struggling to obtain the ascendancy. Should these countries despatch their goods via Roumania, and should the latter be compelled to remain neutral, it is obvious that Brown is being accorded advantages as against Jones. It has been said: “If you want to fight, fight fairly with your weapons! Why make use of your geographical position?”

What constitutes the patrimony of an individual? All that nature has bequeathed to him and all that he has himself gained. What constitutes the patrimony of a country? All that nature has given to it, and all that has been added thereto by its own industry. Do not geographical situation, climate, soil, mines, all go to form the natural wealth of a nation? Some nations possess coal mines; we who have none

see them using this coal to warm themselves while other countries have none. Our neighbour Italy has wonderful skies. I have no wish to rob her of them but I would very much like to have similar skies in my own country. How is it that Italy can produce oranges while Roumania cannot do so ?

I shall soon have finished,—I have already taken up too much of your time. The point I wish to make is the following;—In the field of economic competition, why should not a country make use of its geographical position, in the same way as it uses its climatic or topographical characteristics or its mineral wealth,—in other words, all that God has given it ? Why should the price asked for a piece of land situated in Piccadilly Circus be higher than for a piece of land at Land's End ? The reason is the situation of the former. The principle is the same. We are prepared to make sacrifices in an endeavour to attain the lofty and noble ideal which we have set before us. I said just now that Roumania was in favour of freedom of transit. The case is somewhat different, however, with reference to questions affecting the country itself. countries must be prepared to grant each other mutual privileges; in fact these must be a system of give and take. Roumania would have to make a bargain with any Power to which it accorded special advantages. The question of transit through Roumania may well be of interest to some countries and not to others. For instance, what interest can Japan have in transit through Roumania ? In short, transit is an economic weapon; it is a form of protection.

I have no intention of discussing this question at the present time,—such a discussion would lead us too far from the point at issue. We do not require to know whether in the future Roumania will adopt the policy of protection or that of free trade. Some countries, such as Great Britain, have adopted free trade; yet this has not prevented them from attaining the degree of prosperity which they enjoy to-day. On the other hand, France has generally been a protectionist country, but this fact has not interfered with her prosperity.

Roumania is now about to enter the struggle. She has to compete with States formed many centuries ago. It is impossible for her to decide forthwith. Roumania asks you to allow her a short respite in order to enable her to get a grasp of her new position, and to consider whether the benefits which will accrue to the country in general will compensate for the detriment to individual interests. If this applies to equality of treatment for transit traffic, imports and exports, it applies with still greater force in regard to imports, exports, transit and domestic traffic.

Roumania cannot accept the principle of equal treatment for internal traffic and import and export traffic, and for this reason I do not intend to occupy your time with a discussion of the complex problem of the operation of railways, either by the State or by private companies. Both systems have their supporters. It should be stated that, in my country, the railways have been operated by the State for a considerable period. You are aware that in a new country like mine the Government possesses a less degree of moral authority over the electors. It is difficult to combat the efforts of agitators who are always ready to fish in troubled waters. It is obvious that operation by the State is more efficient in countries where the Government is strong. We have, however, adopted this system and we intend to stand by it. We have done so in order to be able to make use of this economic weapon in the development of our country. With this end in view the State makes considerable sacrifices, and often bases its tariffs upon considerations other than the cost of the transport. You must not forget that the spirit of enterprise and individual initiative was non-existent in Roumania fifty or sixty years ago. Since that time our engineers and our principal commercial undertakings have made considerable progress. In 1865 there were only two engineers in Roumania. You will readily understand that, in these circumstances, our country is not in a position to compete with undertakings in England or other countries. Under these conditions it would be quite impossible for Roumania to accept the principle that the rates applied to domestic traffic should also be applied to transit traffic and import and export traffic.

I have yet another reservation to make in respect of equality of treatment for transit traffic. I beg you once more to believe that my reservations have no ulterior motive and are absolutely sincere. I repeat this once again, because I wish you to realise all the scruples which cause Roumania to hesitate before signing any conven-

tion. I emphasise this point for the very reason that Roumania intends to abide by whatever she signs; her intention is not,—as you might be inclined to think,—to create difficulties in order to avoid giving her accession. We are anxious to respect the Convention to the letter, once we have affixed our signature, and this leads us to make certain reservations now, for we realise that we shall be forced to make them eventually. These reservations are connected with the insufficiency of means of transport. One article of the Convention states that account shall be taken of the condition of communications in countries devastated by the war, and also of economic conditions resulting from the war. In this connection, when we come to deal with the articles, I shall ask you to extend somewhat the scope of this provision. There are other considerations to be taken into account, besides the condition to which means of transport have been reduced as a result of the destruction wrought by the war. The demand for means of transport throughout a country must be continually borne in mind, and a country must not be required to neglect its own interests in order to provide for transit traffic. If a country offers such means of transport as it possesses, I fail to see, with the best will in the world, how it is humanly possible to ask it to afford priority to transit traffic over its internal traffic. It is, as a matter of fact, laid down in the Convention that there is no question of granting priority. But I will ask you to go to the opposite extreme, and accord priority to internal traffic over transit traffic, should the necessity arise.

This is particularly essential in Roumania with regard to railway traffic,—I refer to railways because they are more particularly affected by this question. With regard to canals and rivers, everyone uses his own means of transport. On the Danube, those who possess barges can use the river; others cannot. But with regard to railways, the question is quite different. Roumania is now an agricultural country; her products are exported via the mouths of the Danube and the seaport of Constanza. The production of cereals is of course not continuous throughout the year; the harvest takes place at a given period which varies very little throughout the country. The result is such a tremendous accumulation of cereals for export that the whole country is thrown into confusion. For the time being the carrying capacity of the railways,—of all wagons, all means of transport,—is taxed to the utmost. I do not think that the country should be asked to sacrifice her means of transport at such a time, in order to maintain the rights of transit traffic. No doubt you will reply that Roumania cannot be closed to transit traffic for several months of the year, and that it is impossible for export firms, which have continual traffic with the east, to interrupt transit traffic via Roumania for several months, simply because Roumania must transport her cereals. But this is not what I mean; I am suggesting the restriction and not the complete abolition of transit traffic. No matter how congested the Roumanian transit routes may be by the cereal traffic at such a time, transit traffic must be permitted up to a certain point. But naturally this limit will depend upon the shortage of means of transport. To sum up as a result, the opinion of the Roumanian Government is that the right of transit, which is a concession made to general interests at the expense of individual interests, must be confined within certain limits and must not entail the introduction of free trade principles into Roumania, involving the Roumanian market in competition with international markets by allowing the transit of foreign goods across Roumania.

Finally, I would venture to call your attention to a point which concerns not only Roumania but the whole world, and which although it was discussed at another Conference, is certainly bound up with the question of communications; reference must therefore be made to it here. What is known in political economy as circulation of goods involves two distinct operations. Goods may be moved from one place to another without change of ownership, or they may change ownership without moving, or both may happen at the same time. It is obvious that goods cannot be transported from one place to another, sometimes to a considerable distance, and yet always remain under the same ownership. It is equally obvious that goods cannot continue to change hand indefinitely and yet remain in the same place. These two operations are therefore not strictly simultaneous; it does not necessarily follow that whenever goods arrive at a station they will change ownership. Nevertheless, *de facto* circulation, as opposed to circulation *de jure*, could not be effected without a corresponding change of ownership.

We are preparing documents for the despatch of goods from one place to another; the reconstruction of railways and the creation of transit rights are under contemplation, and we are also dealing with the best means for the circulation of goods from place to place. At this point a difficulty arises,—there are factors which impede the passing of goods from the ownership of one person to that of another. If we really wish to take effective steps to ensure the circulation of merchandise from one end of the world to the other, we must also possess the means to enable it to change ownership from one end of the world to the other, I mean a single international currency throughout the world. I was talking just now about the lack of logic involved in digging tunnels and then putting policemen to guard them. The same criticism might be directed against the measures adopted to create transit traffic and the subsequent obstruction of this traffic by means of paper money. At the present time, at the frontiers of all States, officials search all your pockets for money. Goods can never circulate unless they are paid for; even possession of cheques is forbidden. It is curious that at the very time when we are engaged in preparing conventions to facilitate the circulation of goods, very serious hindrances are created by artificial means which prevent the passage of the value of such goods from one country to another,—I refer to the lamentable exchange conditions prevailing at the present time.

This question does not concern us. It was dealt with by another Conference held at Brussels and which, between ourselves, did not accomplish very much. The fact remains that the subject we are dealing with here, and the subject which those other gentlemen were dealing with at Brussels are so closely connected that, unless the first question is settled, our conventions will be useless, because our locomotives will not be able to cross the frontier, and that simply by reason of a piece of paper—the inconvertible bank-note.

In conclusion, I will say a word upon the subject of international waterways. There are special commissions dealing with these questions, more especially with the Danube and the Rhine. I also have a word to say upon another form of transit which is not mentioned at all, because everyone believes that there is no need; nevertheless I intend to refer to it,—I mean transit upon the high seas. No doubt there is no necessity to establish conventions affirming the right of everyone to use the high seas. Allow me to state, however, that we Roumanians cherish the hope that we shall be allowed to pass through the Dardanelles, as freely as, if not more freely than we allow passage through our own country, and we hope, by means of reciprocity, to obtain the right to use the high seas more freely than others are allowed to enter our own country.

With these reservations, the Roumanian Government is prepared to sanction freedom of transit under the conditions laid down. It will no doubt be prepared to go even further in the future, when it has gained more experience, and when its people realise that conditions have changed and that they are no longer being deceived. For allow me to point out that though the Government is well aware that there is no question of any chicanery, the Roumanian nation is more difficult to convince. The Roumanian people are not like us, who have studied history, who are aware that England's word is not the word of Turkey, and that though we have been deceived by the Czars we shall not be deceived by the Republic of France. We know all this, and we have therefore come here of our own free will and are prepared to go even further. But there is reason to fear that our nation, which feels such an urgent need for liberty, will not realise this difference. Once it realises that the Powers which dominate the world to-day will not deceive the peoples, the confidence which it will place in you will be more single-minded and sincere than anything which it could offer to-day, if you were to make an attempt to force it to accede to a convention which it did not feel able to accept of its own free will.

M. Germain ALBAT (Latvia; speaking in French). — The country which I have the honour to represent is a transit State *par excellence*. A very large proportion of goods and travellers proceeding from western to eastern Europe passes through our country,—that is to say, make use of our ports and railways. It is therefore obvious that transit questions will play a great part in the future of our country.

The Latvian Government accepts the principle of freedom of transit, and I am duly

authorised to sign on its behalf the Convention upon Freedom of Transit, which is now before the Conference. There are, however, certain questions of principle to which I must refer. In the first place, there is the question of controlling transit. The scheme submitted by the Commission of Enquiry makes provision for certain legitimate restrictions in regard to rights of general policing, problems of national defence, the protection of public health and customs supervision.

The situation of our country makes it absolutely necessary that transit traffic should be subject to control, and that this control should be strictly enforced; this is especially necessary at the present time and particularly with reference to our eastern frontier. The reasons for this control are well known,—and there is no occasion for me to repeat them.

Finally, I would like to call your special attention to Article 23 e) of the Covenant of the League of Nations, in which special provision is made for areas devastated during the war; this provision applies to Latvia.

M. REINHARDT (Austria; speaking in French). — A glance at the map will suffice to show the nature of Austria's system of communications. Austria also is essentially a transit country *par excellence*. Freedom of transit is therefore of the utmost importance for my country, both from the national and from the international points of view.

The whole policy of the young Republic of Austria is governed by the most liberal principles; it therefore welcomes with profound satisfaction the Convention now under consideration, which is destined to ensure and maintain freedom of transit. Conventions of this kind, however, would be mere scraps of paper if their principles remained in the realms of theory, and if theory were not followed by practice. In order to attain this object, the goodwill of the various countries (which will certainly be forthcoming) is not sufficient, if the technical conditions which are indispensable to transit traffic are lacking. These difficulties, which are due to lack of coal and material and other circumstances, may arise in many countries, and, unfortunately, have already arisen only too often. A satisfactory method of avoiding or at any rate diminishing such difficulties, which often affect certain countries only, would be co-operation between the countries concerned, with a view to the institution of a system of mutual assistance in order to provide a reciprocal guarantee for transport contracts. Is it not desirable that these points should be taken into account in the text of the Convention itself?

If you share my opinion, I will take an opportunity of referring once more to this matter at proper time.

M. Rolf THESLEFF (Finland; speaking in French). — I have asked permission to speak in order to give expression to the great interest which my country takes in the transit question.

In the first place, I wish to state quite frankly that, under present conditions, this question concerns us but little, for the Russian market is of very small importance at the moment. This state of affairs, however, will not continue, and soon the Russian market will inevitably be thrown open to the world. When this time comes, Finland will play a very important part as a transit State. The Gulf of Finland is blocked by ice in winter and, consequently, it is impossible to reach Petrograd by steamer. During several months of the year, other means of communication have to be used, and it is just at this time that a great proportion of the goods will be sent via Finland, because we have two ports which, with the aid of ice-breakers, are accessible all the year round. In addition, our railways are of the same gauge as those of Russia, and transport will therefore be easy and inexpensive. I would add that, in order to facilitate transit traffic, the construction of two free ports and the further development of our railways is under contemplation.

In short, I may say that Finland is very desirous that a definite solution should be attained in regard to the question of transit.

M. HOLCK-COLDING (Denmark; speaking in French). — As representative of Denmark, allow me to say that Denmark rejoices that the principles embodied in the Draft Convention upon Freedom of Transit will in future be applied by the League

of Nations. Denmark has always keenly felt that it was its duty to maintain and develop these principles.

Denmark, by reason of its numerous railways and ferry boat-services, which form a special section of the railway system, and also by reason of its geographical position, has played a great part in transit traffic for more than forty years, and still continues to do so. Our merchant service, which for many centuries was of very great importance, is still being actively developed, and also constitutes an important factor in our transit system. Mention should also be made of the considerable number of ports which are accessible even in winter. In view of our past experience, we have studied the draft Convention with the keenest interest, and are in a position to accept the principles embodied therein.

I take this opportunity of associating myself with the words of M. Lankas, who this morning reminded the Conference that the draft schemes before us are the result of lengthy and mature consideration on the part of the Commission of Enquiry, which included amongst its members a number of distinguished and well-known personalities. In adopting its decisions, the Commission was obviously actuated by thoroughly sound and convincing reasons. It appears to me that still more sound and convincing reasons must be forthcoming before we venture to introduce amendments affecting the principles adopted by the Commission of Enquiry.

M. Charles-Robert PUSTA (Esthonia; speaking in French). — When the roll of countries adhering to the principles of freedom of transit is called, I must answer : present. I can readily associate myself with my colleagues of Finland and Latvia in their remarks, because my country, owing to its geographical position, is called upon to be not merely a passive link, but an active intermediary in trade between Russia and the western world and also because we took care to insert in the Treaty of Peace with Russia a provision regarding freedom of transit, which we intend to maintain and extend in our future relations with that country, no matter what form its government may assume. The Treaty was drafted with this end in view. The Convention before us, therefore, introduced no new feature into our relations with other countries. Esthonia is open to the trade of western countries and to that of Russia. Esthonia, situated as it is upon the Gulf of Finland, can make full use of her excellent ports, which are, I imagine, well-known throughout the world, and the important part which she will play in the future, when her relations with Russia are restored to their normal condition, can easily be foreseen. I therefore fully concur in what has been said by my colleagues of Finland and Latvia, and declare that Esthonia has come hither for the purpose of signing the Convention upon Transit.

M. Lubin BOCHKOFF (Bulgaria; speaking in French). — We are now about to discuss the Convention which constitutes the basis of all the other Conventions contained in the agenda of this Conference. My Government fully appreciates the supreme importance of the Convention on Freedom of Transit and is extremely anxious that this Convention should become part of international law : it therefore instructs me to state that Bulgaria is, in principle, prepared to accept the Draft Convention contained in the *Green Book*. I am also instructed to express the hope that, before the Conference terminates, this Convention will have been endowed with real vitality,— and, signed by all the delegates present, will be ready for ratification by the respective Governments.

In so far as Bulgaria is concerned, I may say that I am empowered to sign all the Conventions contained in the agenda of the Conference.

The PRESIDENT. — I beg to thank the speakers who have stated the views of the respective delegations in the course of the general discussion. Their statements will undoubtedly facilitate our future deliberations. I declare the general discussion at an end.

The meeting adjourned at 7.25 p.m.

PART II

DISCUSSION IN PLENARY COMMITTEE

(M. LOUDON IN THE CHAIR)

OF THE

DRAFT CONVENTION

ON

FREEDOM OF TRANSIT

FIRST MEETING OF THE PLENARY COMMITTEE

(Tuesday, March 15th, 1921, at 11 a.m.)

CHAIRMAN'S OPENING ADDRESS — DISCUSSION OF ARTICLE 1
APPOINTMENT OF RAPPORTEUR FOR TRANSIT QUESTION

The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

OPENING ADDRESS BY M. LOUDON, CHAIRMAN

The CHAIRMAN (speaking in French).—Gentlemen, before we proceed to our task, you must permit me to say how highly I appreciate the honour of being called upon to preside over your deliberations,—an honour for which I am indebted to the Council of the League of Nations, and for which I am profoundly grateful. It is an honour which I appreciate the more highly because, although, by holding the office of Vice-President, I become in a measure international, I am nevertheless a good patriot, and I am pleased and flattered that it should be my country,—a country which is pre-eminently one of transit, which, in my person, is called upon to direct your labours, and especially the meetings dealing with the question of transit.

The questions with which we are about to deal were discussed at great length in Paris during the numerous meetings held at the Ministry of Public Works; these meetings were devoted to preparatory work in connection with the Conventions now before us. I may say that the very voices and gestures, as well as the minds, or more than one of the delegates here present, are familiar to me. I will add that the work in Paris was carried on in an excellent spirit: in spite of many differences of opinion, we were finally successful in reaching agreement. The Commission was permeated by a real spirit of conciliation. Gentlemen, I am going to ask you to take part in our discussions here in the same conciliatory spirit. I am the first to recognise the merits of a certain degree of national egoism,—it is a perfectly natural and healthy sentiment. But let us not forget that in our work here we must make some sacrifices in this respect, and that we must not lose sight of the common weal. Let us therefore bring to our discussions a certain element of idealism, without which nothing great or enduring can be accomplished in this world. I appeal to you most earnestly to help me in this task, and I have no doubt that before long our efforts will be crowned with success. As I often had occasion to observe in Paris, the first essentials to this end are conciseness and brevity, and in order to set an example, I will refrain from any further remarks. Now,—to work!

I should have liked to propose that we begin at the beginning by discussing the Preamble, but unfortunately some of the amendments to it have not yet been circulated,—in fact, I am sorry to say that several have not yet even been handed in. In this connection I might add that it is absolutely necessary for all amendments to be handed in at least 24 hours before the meeting. I hope that all are agreed upon this point.

As the text of all the amendments to the Preamble is not yet available, I suggest that we proceed to the discussion of Article 1.

M. TSANG-OU (China; speaking in French).—Many delegations are submitting amendments to every article, but the Chinese Delegation must necessarily conform to

the exact terms of the instructions which it received on leaving Peking; these instructions were issued after the Chinese Government had received the Draft Convention under cover of a letter dated September 20th last. The Chinese Delegation cannot transmit to its Government by telegraph the proposed amendments to the various articles. I would therefore like to know whether, in the opinion of the Conference, acceptance on the part of a delegate is to be regarded as binding his Government to ratification.

The CHAIRMAN (speaking in French).—No; You can always accept subject to a reservation, with the option of subsequently withdrawing such reservation.

M. TSANG-OU (China; speaking in French).—This being so, I should like to make a short declaration on the subject.

The acceptance by delegates of the Conventions concluded at the General Conference is not to be considered as binding the Powers represented thereat to ratify them, and it is clearly understood that the rights of each Government in this respect are reserved.

DISCUSSION OF ARTICLE 1

The CHAIRMAN (speaking in French).—I will now read Article 1.

ART. 1. — *Definition of Freedom of Transit.* — Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport shall be deemed to be in transit across the territories situated under the sovereignty or authority of any one of the High Contracting Parties, when the passage across the said territories, with or without transshipment, warehousing, breaking bulk, or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the said Contracting Party across whose territory the transit takes place.

Sir Hubert LLEWELLYN SMITH (Great Britain).— This is the place, I think, for me to move an amendment to alter the words *High Contracting Parties*, wherever they occur in the Conventions, into the words *Participating States*. This is purely a question of drafting, but I should explain to the Conference that the reason is that the League of Nations includes a certain number of Members which are *Dominions* and not *Sovereign States*. In diplomatic language they cannot properly be described, therefore, as *High Contracting Parties*, and accordingly we propose the words *Participating States*. But I would like to explain with regard to this, and indeed all amendments of the British Delegation which come under the heading of Drafting Amendments, that all that I wish to do is to give very brief explanations and to suggest that they should be referred to the Drafting Committee, which alone is competent in the matter.

The CHAIRMAN (speaking in French).—Would the British Delegate read these amendments ?

Sir Hubert LLEWELLYN SMITH (Great Britain).— My proposal is that there should be an exact definition of the words *transit by rail or waterway*. We have put forward the following : *For the purpose of this Convention the term "transit by rail or waterway" means transit which takes place exclusively by rail or waterway or by both, excepting transshipment by the usual methods.*

I hold no brief for this exact wording, and I have no doubt that if it is submitted to the Drafting Committee an improvement can be made, but I would explain that the last words are intended to convey that there may be a transit journey which is partly by rail and partly by waterway, with only a short distance between the railhead and the port, transshipment over which must be effected by some other means. We are anxious that such a break in the continuity of the transit by rail and waterway should not be considered as destroying the character of the traffic as transit traffic. That is the sole object. Better words than those I have just suggested will no doubt be found to express the meaning.

M. SERRUYS (France; speaking in French).—The wording of the text does not give the exact meaning of the British amendment. In the first place, there is a discrepancy between the French *désignera exclusivement le transit...* and the English *transit which takes place exclusively by rail or by waterway*.

Further, the French word *transbordement* does not correspond in the least with the idea expressed by our British colleagues, and, as used here, would tend to confuse the meaning of the French text. In French the word signifies the operation of direct transfer, for instance, from a vessel to a wagon, whereas here it is a question of *interruption*. I therefore ask that a fresh wording be found for the proposed text.

Sir Hubert LLEWELLYN SMITH (Great Britain).—As I explained, I do not like this wording, but we want something to meet the case.

M. BONNET (France; speaking in French).—The French Delegation proposes the deletion throughout the Transit Convention of the words *mails and postal parcels*.

Only three months ago, in November and December 1920, the Universal Postal Union, comprising representatives of 82 postal organisations and 70 States, met at Madrid. This Conference, at which I had the honour of being French Delegate, drew up certain conventions laying down definite rules for transit administration. The conventions adopted at Madrid not only affirm the principle of freedom of transit for mails and postal parcels (letters, parcels and postal packets), but also prescribe in detail the method of their collection.

The League of Nations may eventually have to deal with postal questions of an essentially international character; at the moment, however, seeing that the Universal Postal Union has only just dispersed, after accomplishing a task of considerable importance, it would seem not only unnecessary, but dangerous, to reopen the question, —unnecessary, should the Barcelona Conference be content to reproduce the text adopted at Madrid, and dangerous if, on the other hand, the two texts were not identical. In the latter case serious differences of interpretation might ensue and innumerable difficulties be stored up for the future.

In view of these considerations, and in agreement, moreover, with the wishes expressed by the British and Italian Delegations, the French Delegation proposes that the words *mails and postal parcels* be deleted throughout the text of the Transit Convention.

M. BIGNAMI (Italy; speaking in French).—The Italian Delegation has submitted an amendment to the same effect as that which has just been explained by the French Delegation, and which the Italian Delegation is quite ready to accept, since it is practically identical with its own proposal.

M. VALLOTTON (Switzerland; speaking in French).—I should like to dissipate a slight misunderstanding which appears to have arisen. We all agree with what the French Delegate has just said, but, if I understand rightly, the post office officials who took part in the Madrid Conference dealt with the organisation of their respective services, whereas we are dealing with a rather different question, namely, whether *mails and postal parcels* are, in common with other traffic, to enjoy the benefit of the legal safeguards afforded by the present Convention. In any case it would be well to leave no possible doubt with regard to the motive for the deletion of the words *mails and postal parcels*. There must be no possibility of inferring that our intention was to exclude *mails and postal parcels* from the legal safeguards afforded in connection with railway and other transport. For this reason I would request the French Delegation to avoid any possibility of misunderstanding on this point.

M. BONNET (France; speaking in French).—I shall have no difficulty in replying to the question put by the Swiss Delegation,—I was myself present at the Madrid Conference. Article 4 of the Postal Convention, which was there signed by the delegates of 70 States, representing 82 postal administrations, guaranteed free transit for all *mails and postal parcels* whilst also fixing a tariff of charges for this class of traffic. The question put by M. Vallotton is thus fully answered.

In omitting from this Convention any mention of *mails and postal parcels*, we are not in any way excluding them from the application of the principle of freedom of transit, since this principle is laid down in another convention barely two months old.

M. LANKAS (Czecho-Slovakia; speaking in French).—May I make a few remarks as to the reason which led a majority of the Commission of Enquiry to decide upon the retention of the words *mails and postal parcels*.

In the first place, these words appear in all the Peace Treaties which dealing with freedom of transit, and, as certain of their provisions will undoubtedly be replaced sooner or later by those of our general Convention on Freedom of Transit, the retention in our draft of the words *mails and postal parcels* appeared to us not at all superfluous, but, on the contrary, perfectly harmless, and, in fact, essential.

In the second place, it is important to make a clear distinction between freedom of postal transit and freedom of transit as understood in our Convention. The postal conventions deal with quite another subject from that of the present Convention, and have a different bearing. They recognise, as a matter of course, that freedom of transit will be accorded to goods the transit of which is undertaken by the postal services. Here, however, quite a different question is involved. It should be clearly understood that the countries concerned will facilitate postal transport, and that railway companies, for instance, will place no difficulties in the way of the transmission by the postal services of mails and postal parcels.

I think that these are two different points of view, and for the two reasons which I have just given, I must insist on the retention of the words *mails and postal parcels* in our Draft Convention.

M. HOLCK-COLDING (Denmark; speaking in French).—The Danish Delegation is unable to support the proposal of the French Delegation to delete the words *mails and postal parcels*. We consider that the view of the Provisional Committee as expressed in the *Green Book*, is the right one. In the first place, we do not consider that any difficulty is likely to arise from the inclusion of the words in the general Convention and in the postal conventions. In the second place, as the present Convention is a general convention dealing with transit by rail and waterway, it should surely be applied to every class of traffic without exception, and should become a basis for any subsequent conventions dealing with communications. I think that in the event of any difficulty it would be an advantage to have the possibility of recourse to the provisions of this Convention. I would like to add that I am not quite clear as to the meaning of the words *transshipment by the usual methods*, which are to be found in the British amendment, and I hope that the Drafting Committee will find a better wording.

M. BONNET (France; speaking in French).—I would like first of all to draw your attention to the fact that the Universal Postal Union is not a new institution; it has been in existence for 40 years. Three months ago, after nine weeks of continuous work at Madrid, we drew up some six or seven bulky conventions, the terms of which made detailed provision for the transit of every class of postal traffic, whether letters, parcels or packets. I pointed out just now, and I repeat once more, that in this matter the intervention of the Barcelona Conference would either be productive of no useful result, or else would prove a positive danger,—the former if we simply copied the articles as drafted at Madrid, and the latter if we introduced any amendment. The Czecho-Slovak Delegate furnished me with a powerful argument when he maintained the desirability of mentioning *mails and postal parcels* in this Convention, because the Draft Convention on Transit provides a jurisdiction to deal with disputes arising out of postal transit. The Madrid Convention provided for such a jurisdiction,—a system of arbitration, in fact a complete procedure for dealing with disputes with regard to postal traffic between the various postal administrations. The danger is obvious. Which procedure should be used in cases of this nature,—that established by the Barcelona Conference or that provided for in the Madrid Convention?

The above considerations have led the French Delegation to insist upon the deletion of the words *mails and postal parcels*.

M. LANKAS (Czecho-Slovakia; speaking in French).—May I point out that the French Delegate is mistaken in thinking that I spoke of a jurisdiction. The Madrid Convention, as I understand it, defined the relations between the postal administrations of the different States, whilst our Convention, as the Danish Delegate justly observed, is of a fundamental character, and is to serve as a basis for all other conventions, including postal ones, which deal with freedom of transit. Our Convention has a much wider scope. It has to deal not only with the relations between postal administrations throughout the world, but also with international relations between States themselves, as distinct from their postal administrations.

M. HOLCK-COLDING (Denmark; speaking in French).—May I draw the French Delegate's attention to the fact that our Convention relates, not only to the present but,—like the postal conventions,—to the future, and therefore, in our opinion, both can exist side by side without giving rise to any sort of difficulty.

M. ALBAT (Latvia; speaking in French).—I consider that the words *mails and postal parcels* are neither unnecessary nor dangerous, and should therefore be retained. If the terms of the Madrid Convention should be identical with those of the Barcelona Convention, so much the better for the former instrument, which will then enjoy the authority of the sanctions at the disposal of the League of Nations. Moreover, I see no danger of conflict arising between the two conventions simply by reason of the fact that this Convention speaks of *mails and postal parcels*.

There is a second reason. Certain countries which are represented at the Barcelona Conference did not take part in the Madrid Conference. If the words in question are deleted, these countries will not enjoy the benefit of freedom of postal transit. I request therefore that the words *mails and postal parcels* be retained.

M. MIRZA HUSSEIN KHAN ALAI (Persia; speaking in French).—Having taken a personal part in the drawing up of the Madrid Postal Convention, and having signed it on behalf of the Persian Government, I can testify to the clear and convincing nature of the arguments used by the French Delegate, and I am entirely in agreement with his views on the subject. As to the contention that the postal conventions deal with relations between the postal administrations only, I would reply that there would appear to be a misunderstanding on this point. These conventions were drawn up between States, and are subject to ratification by their Parliaments.

Sir Hubert LLEWELLYN SMITH (Great Britain).—After having listened to this interesting discussion, which clearly shows that there are arguments both for and against the French proposal, the British Delegation maintains the view which it has held from the beginning, and which is expressed in the report appended to the Draft Conventions, namely, that it is better for the present Convention not to deal with *mails and postal parcels*. We therefore support the French proposal. We think that, on the whole, the danger of having two overlapping jurisdictions is greater than any advantage which might be gained by the presence of the words in this Convention.

M. BIGNAMI (Italy; speaking in French). — On behalf of the Italian Delegation, I would like to add to the arguments which have been advanced in favour of deleting the words *mails and postal parcels*, that, as regards transport by air, for instance, another convention of general application will doubtless be concluded, and will be cited as authoritative on such matters. For the moment, however, it is perfectly natural that reference should be made to the conventions concluded at Madrid,—between States and not between postal administrations,—on all questions relating to postal traffic.

M. REINHARDT (Austria; speaking in French).—I do not know whether the intention is to establish a convention alone, or whether provision will be made for an annex to form an integral part of the Convention, and containing interpretations of certain of its provisions. On the latter assumption, we could perhaps reconcile the two principles which have just been propounded, by deleting in the actual text any

rence to *mails and postal parcels*, whilst making it clear in the annex that they are to be treated in the same way as any other articles mentioned in the Convention.

M. VON TREUTLER (Germany; speaking in French).—In the opinion of the German Government, the words *mails and postal parcels* should be omitted in view of the fact that this matter has been settled by the Madrid Postal Convention. I cannot therefore do better than second the French proposal.

M. LELY (Netherlands; speaking in French).—Whilst sharing the views of the British Delegation, we do not arrive at the same conclusion. We have still to discuss Article 10, which specially mentions certain conventions, and we have already had proposals to omit this article. Should the Conference retain it, however, we consider that a clause might be added governing the treatment of *mails and postal parcels*, and taking precedence of any other provisions on the subject. For the moment we are in favour of shelving the question until the time comes to discuss Article 10.

M. PERIETZEANO (Roumania; speaking in French).—The retention of the words *mails and postal parcels* appears to me dangerous, not only for the reasons given by the French Delegation, but also for another reason. Generally speaking, the Post Office is a State monopoly in every country. The Madrid Convention, though of course concluded through the medium of the Governments of the various States, is a convention between postal administrations for the regulation of their international postal traffic, and the mention in this Convention of the transit of postal matter through a country, over and above what is laid down in the Madrid Convention, might be construed into authority for one State to despatch sacks of postal matter in transit through another State, as if they were goods, without reference to the postal authorities of that State. An anomalous situation would result and support would be lent to the view that the despatch of postal traffic by the postal authorities of the country of origin was carried on under the Madrid Convention, whilst postal traffic conveyed through a country by rail or water would be governed by the provisions of the Transit Convention. The legislation establishing a state monopoly of the postal services in every country only applies to internal postal traffic; it might therefore be urged that a State can forward its postal matter *via* another country without reference to the postal authorities of that country. This would constitute an innovation, for a sackful of letters is not merchandise unless you expressly desire that it should be so regarded. But in such circumstances, the railways would be compelled to accept for transit sealed post office vans, which would pass through the country without any intimation being given to the postal administration of the country.

We should therefore not only reserve this matter for discussion at a later date, but should accompany this postponement by an explanation. As I have shown, there is a marked difference between the two views, and if the Conference agrees, I propose to leave the words, with an explanation either to the effect that the State monopoly in postal traffic extends to transit, or that postal matter may not be sent in transit except through the medium of the postal authorities of the country, or else that mails and postal parcels are to be considered as goods in transit. The choice is left to the Conference, but I will add that, in my own view, postal matter cannot be sent in transit through a country where the Post Office is a State monopoly, without the concurrence of the postal authorities, and a State cannot be asked to allow the passage of a post-office van without the knowledge and co-operation of the local authorities, in accordance with the Madrid Convention. We must come to a decision on this point before deciding to alter or omit the phrase in question.

M. LANKAS (Czecho-Slovakia; speaking in French).—In reply to the Roumanian Delegate's remarks, may I remind the Conference that the question of monopolies is treated differently in different countries, and that the exclusion of monopolised goods from railway transport is dealt with in the Berne Convention.

The CHAIRMAN (speaking in French).—I suggest that we simply vote on the Franco-Italian proposal to delete the words *mails and postal parcels*.

The amendment is carried by 22 votes to 11.

M. VALLOTTON (Switzerland; speaking in French).—It is important to avoid any misunderstanding on this point, and I repeat my proposal to insert in the Protocol some form of declaration by the Conference to the effect that the vote merely indicates a wish not to infringe upon the Madrid agreements, and that the principle of freedom of transit for mails and postal parcels remains unimpaired.

M. SIBILLE (France; speaking in French).—The difficulty is lessened by the fact that in the Madrid Convention we find the following provision : *Freedom of transit is guaranteed*. We can therefore surely all agree to the insertion in the Final Protocol of the clause advocated by the Swiss Delegation.

The CHAIRMAN (speaking in French).—Is everyone agreed ?

Before proceeding with the discussion, I would return to the British amendments. The British Delegation have proposed three drafting amendments to Article 1, and ask that these may be referred forthwith to the Drafting Committee. They are as follows :

Article 1 (Title). Omit the words *freedom of* and insert the words *traffic in*.

Line 2 : after the word *transit*, add the words *by rail or waterway*.

At the end of the Article add : *Such traffic is hereafter termed traffic in transit*.

M. SÉRRUYS (France; speaking in French).—May I point out that it sometimes happens that amendments which have the appearance of being merely drafting amendments touch upon the substance of the question, and a delegation submitting amendments which it considers to be only points of form sometimes finds that in the course of the discussion these amendments, apparently of form, have assumed the character of amendments of substance. It seems to me somewhat dangerous to draw a distinction between drafting amendments and amendments of substance. In my opinion every detail of a text under discussion, down to the very smallest, should be thoroughly examined, because the full force of even a slight modification in form is not invariably appreciated by the mover of the amendment. I cannot therefore agree that a cut-and-dried distinction should be made between drafting amendments and amendments of substance.

The CHAIRMAN (speaking in French).—Would you have any objection to their being dealt with by the Drafting Committee ?

M. SERRUYS (France; speaking in French).—None; but with regard to these drafting amendments, I should like any explanations which seem to be called for to be given to the Conference.

The CHAIRMAN (speaking in French).—That can be done just as well later on.

The drafting amendments to Article I proposed by the British Delegation are referred to the Drafting Committee.

We will now proceed with the discussion of Article 1. The Italian Delegation has presented an amendment.

M. BIGNAMI (Italy; speaking in French).—The amendment is as follows : —

Line 3, after the word *territories* add the words *or the territorial waters*.

I would point out that in the last paragraph of Article 2 are to be found the words : *it being understood that the crossing of territorial waters is free*.

We are not clear as to the precise meaning of the word *free*, and of the distinction here made between *territory* and *territorial waters*. Questions relating to the latter are governed by international law, and it is obvious that, by proclaiming the principle of freedom of transit across territorial waters, we should be modifying existing international law on the subject. There are, for instance, considerations of national defence

which may on occasion prevent States from according free transit across their territorial waters (for instance, the proximity of a fortified point), and there are yet other reasons. Would it not be well to insert in Article 1, immediately after the word *territories*, the words *or territorial waters*? We regard it as essential that, throughout the text of this Convention, the principle of freedom of transit should be affirmed, not only across the territories of the various States but—subject of course to similar reservations,—across their territorial waters.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Is this not an occasion for the appointment of a small Sub-Committee to consider the precise wording of the reference to territorial waters in this Convention. It is clear that the text cannot stand exactly as it is drafted, if for no other reason than that the English version is quite different from the French. I understand from M. Serruys that the French version is not quite consistent with French law, and therefore some change will have to be made. This is a very difficult and delicate question, but perhaps the Italian Delegate will agree to the appointment of a small Committee to decide as to the form of words which should be used in order—and this is what we all wish—to guarantee that a country, having once accorded free transit across its territories, should not then make that concession inoperative by refusing free transit across the territorial waters giving access to those territories. If a Committee could be appointed, it would save a great deal of the time of this Conference, which would otherwise be taken up in discussing questions upon which it might be difficult to obtain agreement. I refer to the question of the drafting and precise wording of the reference in this Convention to transit across territorial waters. The question whether this should go in Article 1 or in Article 2, or be an entirely separate article, would be left open.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation accepts the proposal made by the British Delegation.

M. SERRUYS (France; speaking in French). — I should like to state that I am in complete agreement with the British Delegation on this question. The French text of Article 2 does not in any way correspond to the English, and further, the concluding sentence in the French version is far from fulfilling the aim we have in view. We must therefore try to find some other way of expressing this doctrine upon which we are all agreed, and Article 2 seems to be the place for it. The essential thing is to ensure that the principle of freedom of transit, which forms the basis of our Convention, is not rendered inoperative by conditions imposed upon transit across territorial waters.

Accordingly, it will suffice to say that transit across territorial waters will be subject to the same conditions as *land transit*, or words to that effect. This phrase could be embodied in Article 2, but I personally see no objection to adopting the Italian proposal in connection with Article 1. If, however, the question cannot be thus easily settled, I shall be happy to agree to the formation of a Sub-Committee for the further study of a problem which has already been discussed at great length at the Paris Conference.

M. ALVAREZ (Chile; speaking in French). — I should like to supplement the remarks of the French Delegate by suggesting that the words *territorial waters* should be replaced by the words *land and sea territories*. I shall no doubt have an opportunity in the Sub-Committee of explaining my reasons for this alteration.

The CHAIRMAN (speaking in French). — I propose the appointment of a Sub-Committee to consider this difficult question, to be composed as follows : Sir Hubert Llewellyn Smith, MM. Serruys, Bignami, Alvarez and Scassi.

Has any one any objection?

The motion was carried. (1)

(1) See p. 49 for the continuation of the discussion on the subject of territorial waters.

M. SERRUYS (France; speaking in French). — May I suggest a slight modification which I think would be appropriate here? The words of the text are : *Persons, goods, vessels, coaching and goods stock*. I propose that special reference be made to baggage which is habitually dealt with on a different footing from goods, and which, moreover, in certain countries, is legally distinguishable from ordinary goods traffic. By “goods” are usually indicated articles of commercial traffic, whilst “baggage” is private property. In certain countries in particular the conditions of insurance are different for baggage and for goods, and I therefore propose that the enumeration should be as follows : —

Persons, baggage and goods, vessels, coaching and goods stock.

The CHAIRMAN (speaking in French). — We will now vote upon the motion of the French Delegation. Are we all agreed?

The motion was carried.

The wording will accordingly be as follows : —

Persons, baggage and goods, vessels, coaching and goods stock....

We will now consider the amendment put forward by the Indian Delegation.

Sir Louis KERSHAW (India). — The amendment which stands in my name is the following : — in Article 1 substitute for the words *with or without.... breaking bulk, or change in the means of transport* the words : *with or without.... breaking bulk due to change in the means of transport*.

The object of this amendment is to express what is understood to be the intention of the article. When goods are in transit across a country it is reasonable, indeed necessary, if there is to be real freedom of transit, that breaking of bulk should be allowed,—for example, it is necessary, if goods are transferred from a broad-gauge to a narrow-gauge railway, or from railway to barge or to a vessel, or vice versa. But I understand that nothing more than that was contemplated. If goods are carried in transit across a country in the same receptacle or container, whether it be a railway-truck or the hold of a ship, it was never, I think, intended that breaking of bulk should be permitted. I am confirmed in this view by a passage in the Report of the Commission, which will be found at the top of page 41. The passage (1) is : *Goods in transit are debarred from any process of manufacture, packing or unpacking en route*. I think that the intention is perfectly clear : when there is a change in the means of conveyance, breaking bulk should be permitted, but when the goods go through without any change in the means of conveyance, no breaking of bulk should be permitted. It is indeed conceivable that permission to break bulk in such a case would interfere with the right of a State to take reasonable precautions for its own protection.

M. POLITIS (Greece; speaking in French). — I do not agree with the Delegate for India; I consider that his amendment completely changes the meaning of the article.

There may be a breaking of bulk without any change in the means of transport,—for instance, when there is a change in the width of the gauge, or when for some reason goods are unloaded from a wagon and subsequently reloaded into the same wagon—on the occasion of a customs examination, for example, or in connection with measures for national defence. The intention is to make sure that the wagon contains the actual good declared. In such cases there is a breaking of bulk, but no change in the means of transport. Consequently, I am in favour of leaving the *Green Book* text untouched : *with or without... breaking bulk or change in the means of transport*. These are two entirely different processes.

M. KROLLER (Netherlands; speaking in French). — We are not clear as to the meaning of the amendment. Supposing a vessel comes from India with a 6,000 ton cargo of rice. If she unloads half of it at Marseilles and continues her voyage to England with the rest of it, is she to be considered as in transit as regards the 3,000 tons with which she continues her voyage?

(1) See p. 287.

Sir Louis KERSHAW (India). — I understand the question to be whether a steamer in transit, which unloads a portion of her cargo at a port, is breaking bulk or not. I certainly think this is an instance of breaking bulk. The discharge of a portion of the cargo constitutes a change in the means of conveyance.

M. KROLLER (Netherlands). — The cargo which goes on to England does not change its means of transport, but remains in the same steamer.

Sir Louis KERSHAW (India). — But the portion which is discharged has been discharged for the purpose of being placed in another means of conveyance, whether another steamer or a railway wagon.

M. KROLLER (Netherlands). — I should like to ask the Indian Delegate whether he really undertands the amendment in this way. To a certain extent it is a question of wording. May I repeat the question? A steamer comes from India with 6,000 tons of rice. 3,000 tons of that rice are sold at Marseilles and unloaded there; the steamer goes on to England with the other 3,000 tons. Are the 3,000 tons of rice remaining on board at Marseilles to be considered as in transit or not? In our opinion they are in transit.

The CHAIRMAN (speaking in French). — Will Sir Louis Kershaw reply to the Dutch Delegate's question?

Sir Louis KERSHAW (India). — I confess that when I moved this amendment I had in mind transit across country, and I worded the amendment in this way in order to cover change in the means of conveyance,—for example, from one gauge to another gauge, or from a railway wagon to a river or sea vessel. In the case before us, I should think that if a portion of the cargo were discharged at Marseilles,—say for Switzerland,—this would constitute a breaking of bulk, and would be permitted under my amendment, because it would be *with or without... breaking bulk due to change in the means of transport*. The breaking of bulk has been brought about because the rice must be put on rail at Marseilles for transport to Switzerland, and is therefore permitted. I understood the question was with regard to rice, and I am talking of rice that is subject to a change in the means of transport. If I may say so, it is rather pedantic to make a distinction between the rice taken to Switzerland and the rice taken to England. I do not know whether I am sufficiently explicit, but I do not see how the rice destined for England comes into the Convention at all. It is not in transit anywhere; it makes a direct voyage from India to England.

M. SERRUYS (France; speaking in French). — The debate has become rather confused, and the reason for the amendment has been lost sight of. I understood the motive to be the desire of the Indian Delegate to prevent the process breaking bulk being used as a pretext for re-packing. He wishes to avoid the possibility of any change in the packing or any handling of goods, and to prevent any breaking of bulk for this purpose. From the explanations which he has given me I understand this to be the intention of Sir Louis Kershaw's amendment. He wishes to limit the occasions when breaking bulk is permissible, and in my opinion his amendment has gone too far in that direction by no longer allowing the breaking of bulk except in the case of transshipment; whereas the Greek delegate has quite rightly observed that breaking of bulk may be necessitated in the course of operations other than transshipment.

If we wish to give satisfaction to Sir Louis Kershaw we must keep the text as it is, and say : *with or without transshipment... breaking bulk*, whilst making quite clear in the Minutes that breaking bulk may only be carried out during transit when it is not accompanied by re-packing. For this purpose it appears to me that it would be sufficient to make a reference to the point in the Minutes, without making any change in the text. If we set ourselves to foresee every possible contingency we shall end in drawing up, not a convention, but an international commercial code. I will therefore request the Delegate for India to withdraw his amendment, and to be content

with the reference in the Minutes which I have just outlined. I think everyone will agree upon this point.

Sir Louis KERSHAW (India). — I am satisfied with that proposal. I only wished to draw attention to the point.

The CHAIRMAN (speaking in French). — I propose to call upon Sir Louis Kershaw and M. Serruys to prepare a draft for insertion in the Minutes. (1)

We now come to another amendment which has been submitted by the Serb-Croat-Slovene Delegation, but has not been distributed. I will ask M. Avramovitch to explain this amendment.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In the amendment to Article 1 submitted by my Delegation, it is proposed to omit in line 1 the word *vessels* and to add after the word *transport* in line 2, the words : *except vessels of all kinds and rafts*. The discussion which has just taken place serves to show that the confusion has arisen through failure to distinguish between two different things,—the vessel and its cargo.

I will take this opportunity of explaining briefly the proposal we are submitting to the Conference. We are dealing with a draft convention on freedom of transit, not on freedom of navigation. Do not imagine that my Delegation is opposed to the principle of freedom of navigation, but this is not the place to discuss it. We must wait until the discussion of the Convention on the Régime of Navigable Waterways. All I ask is that a convention should not be concluded which, for all our good intentions, would be calculated to give rise to misunderstandings and difficulties in the future. For this reason we wish to omit from this article the word *vessels*. There is no question of freedom of transit in connection with vessels,—they are in a sense an actual obstacle to transit. In the first place, every vessel flies its own flag, implying that it is under the protection of the country whose flag it flies. In the next place, it has its own captain, and, thirdly, it can go anywhere, whereas the means of locomotion which are used for transit traffic,—wagons, coaches and locomotives do not possess these three characteristics. They have no flag and no commander of their own, and their movements are restricted to definitive rail routes. All this is a proof that the present is not the time to discuss the question. If any delegations are desirous of further explanations on the subject, we shall be only too glad to give them.

The CHAIRMAN (speaking in French). — You will realise the difficulty of the present procedure. Unless amendments are put in twenty-four hours in advance, they cannot possibly be discussed.

M. PERIETZEANO (Roumania; speaking in French). — I should like to make some remarks not only on the amendment, but also on the article itself. It is difficult to avoid the handing in of amendments during the discussion. In every parliament it is the custom to propose amendments at the last minute.

The CHAIRMAN (speaking in French). — It is desirable to avoid it. I will ask you to make every effort to submit your amendments to the Officers of the Conference in advance.

M. PERIETZEANO (Roumania; speaking in French). — I have one to propose which I will put in this afternoon.

(1) In consequence of this decision, and after an exchange of views between M. Serruys (France) and Sir Louis Kershaw (India), the following text was proposed for insertion in the definitive verbatim report : —

“ Though in certain circumstances, breaking bulk may be necessary and must be permitted, as for instance in the event of a change in the mode of transport, it is to be understood that the Governments shall be entitled to take reasonable precautions to verify that the goods are genuinely in transit, and that no substitution or change in their characteristics takes place : to grant authority to break bulk on any of these grounds would be contrary to the intention of the article.

“ The packing or unpacking of goods in transit is forbidden. ”

**APPOINTMENT OF RAPPORTEUR FOR THE QUESTION
OF FREEDOM OF TRANSIT**

The CHAIRMAN (speaking in French). — I propose that M. Neujean of the Belgian Delegation be forthwith appointed Rapporteur for the question of freedom of transit.

Does everyone agree?

I declare M. Neujean to be appointed. We will appoint an assistant rapporteur at a later date.

The meeting adjourned at 1.10 p.m.

SECOND MEETING OF THE PLENARY COMMITTEE

(Wednesday, March 16th, 1921, at 11 a.m.)

DISCUSSION OF ARTICLE 1 (CONTD.) — REPORT OF SUB-COMMITTEE ON TERRITORIAL WATERS
APPOINTMENT OF ASSISTANT-RAPPORTEUR FOR TRANSIT QUESTION

The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 1 (contd.)

M. PERIETZEANO (Roumania; speaking in French). — In order to throw light on the question, we must, before proceeding any further, ask ourselves what the expression *transit* implies. It means the act of passing from one frontier of a country to another without breaking the journey. There is a yet more important question,—to what do we wish to afford this privilege? Entirely different classes of traffic are included in the same paragraph of the article,—a fact which renders it extremely difficult to settle the conditions to be applied to transit traffic. Indeed, the wording of Article 1 is rather amusing. It begins with a reference to the transit of *persons, goods, mails and postal parcels, vessels, coaching and goods stock or other means of transport*. According to this wording it would seem that persons are a means of transport. It is from this sentence that confusion arises, for the transit of goods, persons and vessels is one thing, and the transit of means of transport is another. Means of transport are not transported,—they circulate, which is not at all the same thing. A vessel transporting goods by canal is undoubtedly engaged in transit traffic, if it crosses a frontier, but the vessel itself does not constitute goods in transit,—it is a means of transport. Goods are accompanied by a way-bill—a bill of lading,—whereas a vessel has nothing of the kind. We cannot therefore lay down the same conditions for the transit of persons, vessels and goods, as for the circulation of the means of transport required to convey the former through a country. There is a very marked difference between the two, for whereas transit facilities must be provided for goods, persons and baggage upon all railways and waterways, the same does not apply to the transit of means of transport. In all countries there are routes upon which the various means of transport are subject to monopolies. For instance, railways may be either directly operated by the State or else conceded to private companies. Means of transport can only belong to the company which operates them. There can therefore be no question of allowing the transit of means of transport via routes upon which means of transport are provided by the State or by companies holding concessions. Means of transport may only proceed via routes on which there exists a public service which has monopolised the means of transport. Goods, on the other hand, must be allowed to pass by any route or method of transport. With regard to the affirmation, at the end of the article, that transit is free, the result, if this provision were carried out to the letter, would be that trains with their locomotives could make use of any railway lines, since mention is made of the transit of vessels and *other means of transport*.

A vessel is equivalent to a train with its locomotive, its motive power, its wagons and goods; in fact, a railway train with its engine, wagons and goods may be compared with a vessel. If a vessel, together with its motive-power and cargo, may not pass through a canal, neither may a train make use of a railway. For this reason a distinction must be drawn between a régime of transit applicable to goods, persons and

baggage, and to the régime of transit applicable to means of transport used to convey these goods; due care must be exercised in the Convention to avoid granting to means of transport privileges which should only be granted to persons, baggage and goods. In other words, the same régime cannot be applied to both.

In the case of goods, transit implies a through journey without breaking bulk. This is quite intelligible as regards goods, but are not persons to be allowed to leave their carriages during transit? The question is absurd. This confusion between persons and goods arises from the fact that an attempt has been made to deal with entirely different things under the same heading; for the transit of persons, baggage and goods is an entirely different thing from the circulation of means of transport upon routes where the means of transport are monopolised by the State or by the companies to which concessions have been granted.

There results the following definition, which is of considerable importance; transit constitutes that part of the complete journey which has both its starting-point and its place of destination outside the country of transit. How am I to know whether goods are in transit unless I know their complete journey? Goods in transit are always accompanied by a way-bill; when they arrive at a frontier for the purpose of proceeding direct to any other frontier, they constitute goods in transit. I suggest therefore that for persons, goods and baggage, the details of the whole journey, as specified in the way-bill, should serve as an indication. You will notice that I am now talking absurdities too, for I have included persons, baggage and goods in the same category. But there are no way-bills for persons, and it has never occurred to anyone to ask whether persons entering a country by one frontier intend to leave by another. Persons have always been allowed to travel freely in all countries; no-one has ever troubled to enquire whether travellers were in transit or not. It is therefore superfluous to state once more in the Convention that the transit of persons is free. When persons enter a country there is no need to make certain that they will leave it again. With goods and baggage, however, it is quite different. This is where the customs laws come into play. The tariff applied may vary according to whether the goods are in transit or destined for some point in the interior of the country. When the goods enter the country, therefore, we must know whether they are in transit or whether they are to remain in the country. It is true that there is a way-bill, but anyone who has had anything to do with the operation of railways will know that the consignor is entitled to make subsequent alterations in the way-bill. What we have to consider is the way-bill at the time when payment for the transport contract falls due, for it would be impossible to trace for several months goods which had in the first place been imported. As you can imagine, such a proceeding would lead to serious complications in the keeping of the accounts. I repeat once more that the way-bill, at the time of payment of the transport contract, is the only means which will enable us to judge whether the transaction which has taken place is one of transit, importation or internal transport. But the system of way-bills is only applied to goods and baggage. Vessels are subject to an entirely different régime. I have proposed an amendment to the effect that after the words *of the whole journey* there should be added the words *as provided by the way-bill which serves as a basis for payment of the transport contract*. I have also suggested the deletion of the words *mails and postal parcels* (this has been agreed upon), and of the words *vessels, coaching and goods stock, or other means of transport*. With regard to these means of transport, there is no longer occasion to concern ourselves with a way-bill. There is no necessity for a vessel to be in transit according to the exact definition of the term. For instance, a vessel may enter a country by canal and may leave it by the same route. This is exactly the same as if it crossed the country; it is still a transit operation.

The question of the circulation of means of transport on national routes is entirely different from the question of goods.

M. LANKAS (Czecho-Slovakia; speaking in French). — In the first place, may I make a general observation? I am under the impression that many delegates have not had time to devote much study to the *Green Book*, nor to the provisions of the various Treaties of Peace. I think that if they were well acquainted with them, their criticisms would not be so severe. However that may be, I believe that a much more

detailed explanation of the preliminary work of the Commission should be given, and that by this means these gentlemen, who did not all take part in the Conference at Paris, would realise what an exhaustive study we made of all these questions. Some of them would learn that subjects which are dealt with here as though they were new, were referred to time and again during that Conference. All the questions raised to-day have already been considered there. As I think I said at the time of the general discussion, the greater part of the provisions which we adopted are the result of compromises, which were reached after all manner of formulas had been tried. For instance, with regard to the definition of transit, allow me to inform the Roumanian Delegate that all the remarks which he has made to-day (and I must admit that they were most apt and interesting) were made time and again during the Paris Conference. The question of the method to be adopted in defining transit was raised during that Conference. We racked our brains to decide whether we could approach transit from the point of view of Customs, and whether a definition of goods arrived at in this way would suffice.

With regard to the question of way-bills, it is very difficult to ascertain at first sight whether any particular despatch is a transit or an import transaction, for, as you know, many goods are re-forwarded *en route* and are sometimes warehoused. I do not, however, wish to labour this point; what I wish to impress upon you is that the formula submitted to you is really the outcome of prolonged effort. For my part, I am certain that it would be difficult to find a better one,—unfortunately we must be content with a somewhat indefinite and general formula. Moreover, the *Green Book* states that the Advisory Committee will define the exact scope of this definition for us.

With regard to the other questions, I think we shall have time to return to them at a subsequent meeting.

M. SERRUYS (France; speaking in French). — I will deal very briefly with the Roumanian proposal, which in certain respects is extremely interesting. It comprises four points. The first is a general question of drafting. It is proposed to draw a distinction between persons, baggage and goods on the one hand, and means of transport on the other. This method of expressing the idea has its merits, but personally I shall not support it, because it would entail a re-casting of all the articles of the Convention. I do not think that the Roumanian Delegation will press the second point,—the question of territorial waters; it has been submitted to a committee. The third point is connected with way-bills. Way-bills would be an interesting means of distinguishing between different classes of traffic, and determining the points of departure and destination. That, however, would raise the important question of through bills of lading,—the very form of the proposal implies that there would always be a through bill of lading. This is a matter which I would not wish to see introduced in this article, because it is too wide a problem and should not be dealt with here. Lastly, there is a fourth point which also seems to me of considerable importance: *the same shall apply to vessels, coaching and goods stock, and other means of transport, over routes which are not a monopoly of the State or of a company holding a concession.* Allow me to say that I do not understand this reservation. Is the idea that transit via routes on which a State or private monopoly exists to be forbidden?

M. PERIETZEANO (Roumania; speaking in French). — Yes.

M. SERRUYS (France; speaking in French). — Then in certain States where a monopoly of railway exists, passage will be forbidden.

M. PERIETZANO (Roumania; speaking in French). — Passage will be forbidden to what?

M. SERRUYS (France; speaking in French). — To wagons.

M. PERIETZEANO (Roumania; speaking in French). — No, to means of transport. A wagon which is not unloaded at the frontier is totally different from goods in transit. With your consent we will make the distinction.

M. SERRUYS (France; speaking in French). — Then that is an entirely different theory from the one which served as a basis for the drawing up of the Convention. There will be transshipment at every frontier.

M. PERIETZEANO (Roumania; speaking in French). — No, no.

M. SERRUYS (France; speaking in French). — In that case I should be very glad if the Roumanian Delegate would explain the last point of his proposal. At present I do not understand it.

M. PERIETZEANO (Roumania; speaking in French). — That which distinguishes means of transport from wagons passing the frontier without transshipment is the ownership of the wagon. Is a loaded wagon which passes through a country in transit, itself to be regarded as in transit? No, it is lent by a railway in one country to a railway in another. At whose disposal is it? At the disposal of the railway over whose lines it is running. If it breaks down *en route*, the goods are transhipped and the wagon is used for some other purpose. In a word, we cannot say that the wagon is in transit. It is lent by one railway to another railway in order to avoid transshipment. It does not belong to the consignor, it belongs to the company undertaking the transport, and it is on this understanding that it is repaired and lubricated. I therefore maintain that means of transport, whether vehicles or other forms of conveyance, are not in transit on routes over which such means of transport are subject to a monopoly,—in other words, upon railways which are State monopolies or by concessionary companies, nor yet upon canals where traction and means of circulation are similar monopolies.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I wish to convey a respectful but serious warning to the Conference regarding the grave danger of destroying the value of this Convention by overloading this clause with minute and detailed reservations. We have before us several proposals,—including one submitted at the close of our last meeting by the Serbian Delegate, in regard to which no decision has been taken, and we now have several further suggestions made by the Roumanian Delegate.

Let me first take the one which relates to the through way-bill. The French representative has already shown the danger of that proposal, but if you turn to Article 5, you will find the following express provision :—

Each Contracting Party shall have the right to take reasonable precautions to ensure that persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport are *bona fide* in transit and to avoid danger to the safety of any route or means of communication.

That, surely, is sufficient to cover any reasonable precaution. We could not possibly admit in the body of the Convention a statement to the effect that way-bills are essential and shall be regarded as conclusive.

I will now take the other amendment. I need not speak about territorial waters, as that has already been discussed and settled by a sub-committee, subject to confirmation by the Conference. We have, however, a proposal by the Serbian Delegation to omit the word *vessels* altogether, and we now have a proposal from the Roumanian Delegate to omit the words *mails and postal parcels, vessels, coaching and goods stock, or other means of transport* in regard to routes which are the subject of a monopoly. I cannot help thinking that the proposal of M. Avramovitch was intended to meet cases in which part only of the through journey is carried out by water; he was afraid that this definition would entitle a vessel flying a foreign flag to penetrate at the end of its voyage into a purely national river, in order there to discharge its cargo and re-load it subsequently on to a railway, the cargo being thus in transit, whereas the vessel would not be in transit at any stage of its voyage. If this is what he has in mind,

I feel that we can reassure him, since that is not at all the effect of this clause. The vessel itself has to be in transit in order to enjoy the benefits of this clause. That is the opinion given to us by legal experts, and if there is any doubt whatever about it, I have no objection to the point being made quite clear in the Minutes.

With regard to the Roumanian proposal, which, in spite of the explanation just given, I still fail to understand, I will say that, if this proposal is intended to place any additional obstacles in the way of the free circulation of railway wagons for the purpose of through journeys, then I am against it : and if that is not its object, then it is useless. I beg the Conference not to adopt any of these amendments.

M. POLITIS (Greece; speaking in French). — I wish to support the view maintained by my colleague M. Lankas.

I was under the impression that the object of the General Conference was to approve the work done by the Commission,—serious work in which nearly all the delegations took part. I could readily understand that delegations which had not followed the debates, and had not perhaps thoroughly understood the decisions taken, might require an explanation; but I cannot understand why those who took part in our work should come here to demolish it.

M. SERRUYS (France; speaking in French). — I venture to interpose in the discussion once more because, in regard to the fourth point to which I referred when summarising the extremely interesting statement of our Roumanian colleague, there is a minor distinction to be drawn,—one upon which my British colleague has already touched.

The Roumanian Delegate states that wagons and other means of transport used for the purpose of transit through a country are not themselves in transit. This distinction is a perfectly natural one; but with regard to the regulations applicable to wagons used in transit traffic, special conventions are in force between various countries. This is not the object of our Convention. We can meet the wishes of the Roumanian Delegate by drafting Article 2 as follows :—

Subject to... shall facilitate the international transit of persons, baggage, goods, including vessels, coaching and goods stock or other means of transport in transit...

This would imply that the wagons in questions are destined for delivery outside the country. If the text is thus amended, the views of our Roumanian colleague will be met. For us to reach agreement, we had only to explain his meaning.

I should now like to devote a few words to the general observation made by both M. Lankas and M. Politis. We all appreciate the excellent work done by the Commission which met in Paris. Nevertheless I do not think that we have come here simply to ratify that work, but rather to deal with it in second reading. If this were not so it would not be worth while to hold this Conference. Those who are responsible for this work are also to a certain extent responsible for the assembling of the Conference, which is being held in order to lay before us, with the necessary degree of deference to our judgment, and also before themselves (and this implies an equally necessary reservation), a work which we are engaged in studying in second reading, before it leaves the hand of experts to be submitted to the various Governments. I was anxious to make this statement as being calculated to prevent interruptions and to simplify our discussions to a considerable extent.

The CHAIRMAN (speaking in French). — I beg to thank M. Serruys for his remarks, which are entirely endorsed by the Officers of the Conference.

M. TSANG-OU (China; speaking in French). — The Conference appears to have reached agreement with regard to the text of Article 1 of the Draft Convention. I should like, however, to submit for the verdict of the assembly certain explanations which appear to me to be necessary on the subject of the words *breaking bulk, transshipment, vessels, coaching and goods stock and other means of transport*. If the Conference

agrees with me, I shall move that the article be referred to the Drafting Committee for completion.

Supposing we agree that the process of dividing consignments in transit, either by transshipment, breaking bulk or warehousing, be considered as a part of the total journey, it is to be clearly understood that this division of consignments is to be governed by the time-limits and conditions laid down by the Customs, and that the goods will not undergo any transformation and will not be unpacked during their stay.

The word *vessel* (*bateau*) shall be understood to apply to trading vessels, and shall exclude war-craft and vessels used for police purposes or for the transport of war material.

The words *coaching and goods stock* (*voitures*) shall be understood to mean empty vehicles; international agreements with regard to the transit of passengers and goods by rail continue to apply to loaded coaching and goods stock.

The words *other means of transport* are difficult to understand. The report attached to the Convention must be read (1) in order to understand that rafts and haulage are included under this head. On this point, my proposal is as follows :—

In regard to the breaking up of consignments the words *other means of transport* shall not prejudice towage services or other means of traction or transport of which a *de jure* or *de facto* monopoly is held by the State or by a private company.

This implies that a tug or a raft employed in transit traffic must not take part in any operations involving breaking bulk, in order that competition with local ship-owners may be prevented.

In my opinion the word *frontier* as used in this connection should mean the political frontier of a State and those of its adjacent dependencies which are under the same Customs régime, because the word *frontier*, in the sense in which it is used here, applies more especially to Customs.

Should the Conference be of my opinion, I will move that these proposals be submitted to the Drafting Committee for inclusion in the Report serving as commentary. False interpretations will thus be avoided.

The CHAIRMAN (speaking in French). — The British and French Delegates have mutually agreed not to insist upon the insertion of the words *in transit* after the words *means of transport* in line 2 of Article 1. They have, however, agreed that a short reference to the point should be inserted in the Minutes.

Does anyone else wish to speak on the Roumanian amendment? We will now proceed to take a vote upon this amendment.

M. WINIARSKI (Poland; speaking in French). — It appears to me that the Roumanian proposal is connected with the Serbian proposal. At all events the taking of a vote upon the Roumanian proposal will prejudice the decision to be taken on the amendment submitted by the Serbian Delegation.

M. PERIETZEANO (Roumania; speaking in French). — I move that it be submitted to a drafting committee.

The CHAIRMAN (speaking in French). — It would be better to take a separate vote on each of these amendments.

I will now take a vote on the amendment submitted by the Roumanian Delegation

The amendment was rejected.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation is prepared to accept the Draft Convention upon Freedom of Transit subject to certain amendments which, in its opinion, are indispensable.

With regard to Article 1 the Delegation would like to make certain reservations,

(1) See p. 287.

not so much in respect with the text of the article itself as in connection with the commentary which appears on page 41 of the Secretary General's noteworthy report (1).

The words *other means of transport* refer in particular to rafts, tugs with or without tow, and any means of transport by rail or waterway which may be involved in the future.

This question of towage is important, not only from the standpoint of economic interests but also from the legal and technical standpoints. The real object of conventions on transit is the transit of persons, baggage and goods. No difficulty was experienced in including coaching and goods stock, because such vehicles can be regarded as packing in a movable form; the same, however, does not apply, for instance to the transit of locomotives, unless they are regarded as merchandise. The reason is that a locomotive does not merely make use of railways in a passive manner like a wagon,—a locomotive plays a certain part in the operation of the railway system, it is a cog in the machinery of transport. Railways can only be responsible for the work of their own agents. Though vessels which have no means of propulsion may be compared with wagons,—in other words, with packing, the same is not true in regard to tugs. The Polish Delegation is not for the moment considering towage upon international rivers. Its reservation applies only to towage upon national waterways, to which, as a rule, damage or obstruction is more easily caused. The Polish Delegation ventures to call the attention of the Conference to the fact that this question is dealt with in a provision which does not seem to agree entirely with the commentary upon Article 1 of the Draft Convention on Transit. At the end of the Preamble of the Draft Convention on the International Régime of Navigable Waterways we find the following sentence :

This paragraph does not preclude the establishment of public services for towage or other forms of traction carried on as monopolies.

Perhaps it would be better not to deal with questions of this kind in several separate international agreements. The same consideration led the Polish Delegation to support the French and Italian amendments to the effect that mails and postal parcels should be excluded from the present text, on the ground that they form the subject of another convention. The same considerations lead me to state that, in the opinion of the Polish Delegation, river towage should be dealt with solely in the Convention on Navigable Waterways. We propose that anything that could possibly influence the question of river towage should be eliminated from Article 1. This is all that I intended to say to you yesterday, but since then the action of the Serb-Croat-Slovene Delegate has introduced a new factor. His proposal goes further and has a more general scope; should the Conference adopt it, the desires of the Polish Delegation will also be fully satisfied. The question at issue is one of method,—to eliminate from this Convention on Transit anything which might in any way prejudice questions forming the subject of other conventions.

M. NEUJEAN (Belgium; speaking in French). — The Belgian Delegation is opposed in principle to the deletion of any part of the enumeration contained in Article 1, more especially in regard to towage. We are of opinion, however, that if this question of towage is to be discussed, this should not be done in connection with Article 1, but with Article 5, which contains a series of restrictions.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Yesterday I ventured to point out the difference between means of transport and goods or persons transported. Under Article 23 (e) of the Covenant, provision must be made to secure and maintain equitable treatment for commerce; but in providing this guarantee care must be taken to prevent confusion between the means of transport and the goods transported, that is, the cargo and the passengers. We said yesterday that we were prepared to admit the principle of freedom of navigation, but that from the point of view of transit we should like this question to be excluded from the Conven-

(1) See p. 287.

tion. The Polish Delegate adopted the same attitude in regard to towage as did the Roumanian Delegate. We should prefer this question not to be submitted to a vote at this stage, and we would request that it should be passed to a sub-committee, where it could be subjected to a more detailed examination, and any misunderstandings could be removed. It has never been our wish to abolish freedom of navigation, but we desired that the question should be submitted to a sub-committee specially appointed to adjust this matter.

I had intended to make a few general remarks. I shall, however, content myself with a reference to what the French Delegate, M. Serruys, said just now in regard to the points under discussion.

M. SERRUYS (France; speaking in French). — We have before us two distinct proposals which we must be careful not to confuse. The first is the Serbian proposal, the object of which is to cut out of the article anything referring to navigation. I do not understand this; it would be a death-blow to the Convention on Transit if navigation were excluded, since it is in some respects an integral part, and is absolutely necessary from a geographical standpoint in any convention on transit. I therefore move that this proposal should not be considered, and that the question should not be submitted to a sub-committee. With regard to the Polish proposal, it expresses perfectly justifiable scruples on the part of that Delegation,—scruples which are also felt by the Roumanian Delegation. The point of this proposal is to prevent confusion between means of transport used in the transit of merchandise, and means of transport used in deliveries abroad and which must therefore obviously be regarded as goods. Tugs conveying trains of vessels, and railway locomotives, may not benefit by the advantages set apart for this class of transport. This, however, is not a question which we can deal with in drawing up this article, because if we try to insert all these points in the text, we shall be forced to call a third conference, and no one, I imagine, desires that. Some means, therefore, must be found to satisfy the scruples of the Polish Delegation, and I suggest that this should be done by means of a final protocole explaining the exact purport of the article in question on this point. This important question will thus be in its proper place.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I entirely agree with the point of view of M. Serruys, with one small exception, namely, that I am not sure that the Final Protocol is the best place for expressing any reservation that may ultimately be adopted on the subject of towage. I am inclined to think that the suggestion of the Belgian Minister to discuss the matter in connection with Article 5, might be preferable; but whatever happens, I am sure Article 1 is not the place for it. I think the question of the treatment of towage is a somewhat complex one. Would it not be worth while to appoint a small sub-committee specially to deal with this subject? I agree with the Polish Delegate that it is a matter requiring consideration, but we must be sure of what we are doing, because, in the Preamble of the Draft Convention on Waterways, to which reference has been made in this discussion, you will observe that it is assumed that the countries which reserve the right of towage will be under an obligation to provide towage services. A situation might arise in which transit would become entirely illusory, because no one would be allowed to have his own tugs, nor would any other tugs be supplied.

The matter obviously needs a little consideration, and I suggest that a sub-committee might possibly be appointed to deal with it. I feel it would serve no useful purpose, however, to refer the Serbian amendment to a sub-committee, because if navigation is to be excluded from the Convention many of us would feel that we had come here in vain.

The CHAIRMAN (speaking in French). — The Officers of the Conference consider that the Committee has received sufficient explanation with regard to the Serbian amendment, but if the Committee expresses a desire to this effect it shall be referred to a sub-committee.

M. SERRUYS (France; speaking in French). — It is not the Serbian amendment which should be submitted to a sub-committee, but the Polish proposal in so far as it covers the same ground as the Serbian proposal.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — My proposal and that of the Polish Delegation are inseparable, as also that of the Roumanian Delegation, for they all deal with the same subject,—the question of towage on international and national rivers. I therefore ask the meeting not to separate these proposals, but to group them together and refer them to the Sub-Committee.

The CHAIRMAN (speaking in French). — I will now put to the vote the motion to refer the Polish amendment upon towage to a sub-committee.

The motion was carried, 31 voting for.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I presume that in any case the results arrived at by this Sub-Committee will not be inserted in Article 1. The question as to the place in which this text is to be inserted will be dealt with at a later stage.

The CHAIRMAN (speaking in French). — We will now put to the vote the motion to refer the Serbian proposal to the same Sub-Committee.

The motion was lost.

The CHAIRMAN (speaking in French). — We will now take a vote on the Serbian amendment itself.

The amendment was rejected.

REPORT OF THE SUB-COMMITTEE ON TERRITORIAL WATERS

The CHAIRMAN (speaking in French). — The question of territorial waters was submitted to a Sub-Committee (1). M. Serruys will now inform us of the result.

M. SERRUYS (France; speaking in French). — The Report which I have the honour to submit on behalf of the Sub-Committee was adopted unanimously. The question is one of great importance. Steps had to be taken to prevent the object of the Convention on Freedom of Transit being defeated by means of regulations for transit across territorial waters. To this end a clause had to be inserted somewhere in the Convention to the effect that the Contracting Parties authorise transit across territorial waters for the purposes of the Convention. We encountered very considerable difficulties. The definition of the term "territorial waters" by different States varies according to whether the question at issue relates to customs, police, fisheries, etc... On this point it cannot be said that there exists any international law, since the only principle recognised by international law is that this is a purely national question. It is impossible for us to undertake here the study of one of the most complex and difficult questions of international law. We can only recommend as a solution something in the nature of a compromise. In arriving at this solution we have been very careful to respect the autonomy and responsibilities of each individual State, and I hope that many of the adjustments in the terms of the Convention will be carried out in the same spirit. We have, moreover, obtained a collective undertaking on the part of the various States to refrain from impeding transit traffic. The formula which was unanimously adopted is as follows :—

In order to ensure the application of the provisions of this Article (this clause is to be added as an Annex to Article 2), the High Contracting Parties will allow transit in accordance with the customary conditions and reserves across their territorial waters.

(1) See p. 36.

The CHAIRMAN (speaking in French). — I am very grateful to the Rapporteur for his statement.

M. DUCHENE (France; speaking in French). — The French Delegation would like to refer for a moment to the remarks made by the Chinese Delegate a short time ago with regard to the meaning of certain words, such as *breaking bulk*, *transshipment*, *wagons* and *vessels*. The French Delegation has noted these remarks, and considers that they are of value, as constituting very useful definitions of the phrases mentioned by the Chinese Delegate. We consider, however, that these remarks should simply be inserted in the general report to be issued after the work of the Conference has been completed and in the special commentary on the Transit Convention.

The CHAIRMAN (speaking in French). — We will now vote upon the text submitted by the Sub-Committee on transit across territorial waters. The Sub-Committee proposes that the words *it being understood that the crossing of territorial waters is free*, at the end of the first sentence of Article 2, should be deleted, and that the following should be inserted as a second paragraph: *in order to ensure the application of the provisions of this Article, the High Contracting Parties will allow transit in accordance with the customary conditions and reserves across their territorial waters*.

The amendment was adopted, 35 voting for.

M. SERRUYS (France; speaking in French). — From the point of view of phraseology I should like the words *Partie contractante transitaire* in the French text to be altered; there are objections to this phrase. We might simply translate the phrase used in the English text, which is much better, — *the Power across whose territory the transit takes place*. I think, moreover, that for the sake of clearness we should insert *with or without breaking bulk or change in the means of transport*.

In conclusion, I should like to mention a very small detail. I am very sorry to occupy the Committee's time with such insignificant points, but this one will have a certain degree of importance when the time comes for preparing a definite text. I should like to substitute *persons, luggage, goods* for *persons, goods, luggage*, because luggage accompanies persons.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I understand that although we are now going to vote upon this article, it is still subject to amendment by the Drafting Committee.

The CHAIRMAN (speaking in French). — I will now read Article 1 :—

ARTICLE 1. — *Definition of Freedom of Transit*. — Persons, luggage, goods, vessels, coaching and goods stock or other means of transport shall be deemed to be in transit across the territories under the sovereignty or authority of one of the Contracting States, when the passage across the said territories, with or without transshipment, warehousing, breaking bulk or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the said Contracting State across whose territory the transit takes place.

When we have voted upon this Article, it will be referred to the Drafting Committee for any necessary rectification.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I should like to know whether the Article upon which we are about to vote applies equally to railways, waterways and roads. I had submitted an amendment to exclude roads from its application.

The CHAIRMAN (speaking in French). — We can discuss this question in connection with Article 2. At the present moment we are only dealing with the definition of transit.

M. BIGNAMI (Italy; speaking in French). — I should like to point out that one delegation desired a change in the heading of this article. It does not deal with freedom of transit but merely with transit.

The CHAIRMAN (speaking in French). — That is quite true.

Are there any further remarks?

We will now vote on Article 1, which I have just read.

Article 1 was adopted, 32 voting for.

The CHAIRMAN (speaking in French). — We have now to appoint the members of the Sub-Committee on towage (1).

The Officers of the Conference propose the appointment of the following :

MM. NEUJEAN (Belgium);

General MANCE (Great Britain);

MM. CHARGUERAUD (France);

MEDINA (Uruguay);

SEELIGER (Germany);

WINIARSKI (Poland);

TSANG-OU (China);

Admiral PRIKA (Serb-Croat-Slovene State).

Has anyone any objection?

The Sub-Committee will be composed as above (2).

APPOINTMENT OF ASSISTANT-RAPPORTEUR FOR TRANSIT QUESTION

The CHAIRMAN (speaking in French). — I call upon M. Tsang-Ou, the Chinese Delegate.

M. TSANG-OU (China; speaking in French). — Subject to the approval of the meeting, I propose, as assistant-rapporteur for the question of transit, General Mance of the British Delegation, who has devoted more labour than any of us to the Transit Convention; he may be said to be the father of it.

The CHAIRMAN (speaking in French). — I am very glad to see that the Chinese Delegate's proposal is adopted by acclamation.

The meeting adjourned at 1.5 p.m.

(1) See p. 49.

(2) See p. 125 for the Report of this Sub-Committee.

THIRD MEETING OF THE PLENARY COMMITTEE

(Wednesday, March 16th, 1921, at 4.30 p.m.)

DISCUSSION OF THE PREAMBLE AND ARTICLES 2, 3 AND 4

The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

DISCUSSION OF PREAMBLE

The CHAIRMAN (speaking in French). — M. Freire d'Andrade, the Portuguese Delegate, wishes to rise to a point of order.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I wish to request that the Preamble should be discussed before we discuss Article 2. The Preamble indicates the scope of the obligations which I am about to assume, and I should like to have a thorough grasp of its contents before voting upon the articles.

Only this morning I raised the question whether the Draft Convention also applied to transit by road; this point is not at all clear in the various articles before us, and has been the subject of at least three amendments, from the British, Chilian and Portuguese Delegations respectively. I should like the meeting to believe that what I say is not due to any desire on the part of Portugal to create difficulties with regard to transit through her territory,—on the contrary, our legislation is extremely favourable to transit traffic. For instance, the rates charged in the port of Lisbon for transit traffic are only half those charged for national imports. Our neighbours in East Africa are aware of the sacrifices which we have made in order to facilitate their transit traffic. The roads through Angola and Mozambique have been open to them for some years. We would wish, however, to adopt this course wherever it may be possible and necessary without giving a formal undertaking *in respect of roads*, such as is embodied in the Preamble.

Another very important point is that of the Italian amendment (1), in which the Portuguese Delegation entirely concurs; on this point I am also stating the views of our Venezuelan colleague, who, owing to indisposition, has been unable for some days to take part in our meetings. This amendment is to the effect that, according to Article 23 of the Covenant, any resolution which we may adopt cannot affect the terms of existing or future international conventions. The Conference must come to some decision with regard to this amendment to the Preamble, in order that we may know whether this very necessary restriction is to be adopted. For this reason, Mr. Chairman, I beg you to grant my request.

THE CHAIRMAN (speaking in French). — The proposal of the Portuguese Delegation is exactly what I had intended to suggest to you myself,—that is to say, that we should begin with a discussion of the Preamble.

As has just been stated, several amendments to the Preamble have been submitted. One of the most important of these is that of the Italian Delegation. I call upon M. Bignami, the Italian Delegate, to speak.

M. BIGNAMI (Italy; speaking in French). — In our amendment to the Preamble we propose to insert after the word *prejudice* the words *to existing international conven-*

(1) See following page.

tions or to those subsequently concluded which in the opinion of the Council of the League of Nations are not contrary to the spirit of this Convention...

The Italian Delegation would point out that, as is stated several times in the Commentary, the various conventions which this Conference is to draw up are to be prepared in conformity with the terms of Article 23 (e) of the Covenant, which states that :

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League...

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special interests of the regions devastated during the war of 1914-1918 shall be borne in mind.

In our view it is essential that in this Convention on Transit, which is to be the basis of the other Conventions, the amendment proposed by us, which reproduces the exact terms used at the beginning of Article 23, should be added to the Preamble. Several delegations have pointed out that by introducing a reservation of this nature we may perhaps nullify the effect of these Conventions. That is not our view, as will be seen by a reference to Article 20 of the Covenant, which reads as follows :—

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

Each Power is already under an obligation to carry out the provisions of Article 10 of the Draft Convention on Transit. This article refers to the relation between this Convention and existing or subsequent special agreements relating to transit, and it begins with the very same words as the article from the Covenant which I have just read to you :—

Each of the High Contracting Parties recognises in its own particular case that the present Convention cancels all *inter se* obligations and agreements which are incompatible with its terms, and undertakes not to conclude any similar agreement in the future, in the absence of such a combination of special economic, topographical and technical considerations as might justify exceptional agreements of this nature.

Nevertheless, the following remain in force...

As many conventions as you like may be appended here. With regard therefore to conventions containing conditions which conflict with the principles to be embodied in our conventions, every Power can maintain in force agreements already concluded by placing them under the ægis of Article 10. There is therefore no need for us to concern ourselves with the fact that some existing conventions may contain provisions which conflict with those to be formulated by us. With regard to the future, we have merely to refer to Article 20 of the Covenant, which I have already quoted ; but in our view, it might be better in order to establish complete harmony, to add the following after the word *prejudice* : ... *to existing international conventions or those subsequently concluded, which, in the opinion of the Council of the League of Nations, are not contrary to the spirit of this Convention...* We should thus make quite sure that, for the future, there would be no possibility of concluding conventions contrary to the spirit of that which we are now preparing. The essential point is this : —it may well happen that the Governments of certain States forget to mention certain existing international conventions which may not harmonise with the conventions now in course of preparation. Should this occur, such existing agreements must be regarded as void.

Our view, in short, is that the terms of Article 20 of the Covenant must not be lost sight of, and our amendment is simply intended to explain that what we are about to do is based upon this article. In our opinion, Article 10 might well be omitted, provided that the two amendments which I have read to you are inserted in the Preamble.

M. ALVAREZ (Chile; speaking in French). — I entirely agree with the amendments proposed by the Italian Delegation. In our opinion,—and I think that this is beyond dispute,—Article 10 of the draft submitted to the Committee is contrary to the terms of Article 23 of the Covenant of the League of Nations. In our view, therefore, the

Italian Delegation is entirely justified in moving this amendment. The Chilian Delegation had intended to raise this question in connection with Article 10, but since the Italian Delegation has anticipated us, we have no objection to supporting the present proposal.

The Chilian Delegation had made another proposal, but I will refrain from putting it forward until the Committee has come to a decision with reference to the Italian amendment.

The CHAIRMAN (speaking in French). — I think I should remind you that the Italian Delegate has really handed in two amendments. The first consists in the addition, after the word *prejudice*, of the words *to existing international conventions or those subsequently concluded...* and the second consists in adding ... *which in the opinion of the Council of the League of Nations are not contrary to the spirit of this Convention*.

M. VALLOTTON (Switzerland; speaking in French). — On behalf of the Swiss Delegation I ask that this question, which presents considerable difficulty should be referred to another sub-committee. In my opinion we can postpone a decision upon the Italian proposal. I do not think that we can transpose a portion of Article 23 of the Covenant and embody it in another convention. When a text states that a certain course will be adopted, subject to the provisions of some other conventions, this reservation applies to the measures to be taken, and I consider that, in spite of the value of the Italian proposal, we should not adopt it because, by so doing, we should appear to be interpreting the Covenant, and this is not within our competence. It is for the authors of the Covenant to consider whether any reservations which may have to be made should be expressly included in particular conventions. In short, I consider that the Italian proposal is calculated to place us in a very difficult position, and that, before continuing the discussion further, it should be dealt with by a sub-committee.

M. SERRUYS (France; speaking in French). — The question which has just been raised is one of the most important which has been before the Committee since the beginning of our labours. The object of the Italian proposal —and it is a very sound one, —is to avoid dealing, either in the Preamble or in Article 10, with various important questions affecting a large number of States, and relating to the definition of their contractual status with regard to other States. Two facts, however, transpire from the statements which have been made. In the first place, there is a connection with the Covenant, and there is a difference of opinion with regard to this connection; in the second place, there is a connection with Article 10, and a difference of opinion also exists with regard to this.

With reference to the Covenant, the Italian Delegate has told us that his proposal exactly reproduces the terms of Article 23 of the Covenant, and that Article 10 of the Draft Convention is merely a copy of Article 20 of the Covenant. M. Vallotton, on the other hand, states that the provisions of Article 23 cannot be interpreted in this way, and M. Alvarez states that Article 10 of the Draft Conventions is contrary to the spirit of the Covenant.

Here we have two diametrically opposite views. Various interpretations are also given with regard to the connection between these articles. If I understand M. Alvarez aright, he has told us that Article 10 of the Draft Convention refers to bilateral conventions, and Article 23 of the Covenant to international conventions. Having regard to the atmosphere of uncertainty prevailing in connection with these points and also their extreme importance, I think that we should refrain from any premature decision upon them. In my opinion, therefore, we should not refer the matter to a sub-committee, for I consider that it is the Committee itself which should deal with a question of such importance and examine any views and solutions which may be advanced. A few persons who are merely in a position to draw up a brief report, cannot satisfactorily deal with a question of such importance. I am very much in favour of sub-committees in regard to technical questions, but not in regard to questions upon which each one of us has to state his views and pronounce an opinion. Since the solution of this question may, to a certain extent, be dependent upon that decided upon for the preceding articles, I recommend that, instead of referring the matter to a sub-committee, the

Preamble should be taken together with Article 10 for the purpose of this proposal. In my opinion, it is impossible to separate the two things.

My proposal, therefore, is that the Italian amendment should be separated from the Preamble, and consideration of it deferred until we consider Article 10. If we decide that Article 10 is to be retained, we can then adapt the Italian proposal accordingly. If, on the other hand, we consider that the Italian proposal constitutes the best method of dealing with the question raised by Article 10—and at first sight I am rather inclined to favour this view—I wish to avoid committing myself until I have been able to form an opinion with regard to any obligations brought to light during the discussion of the subsequent articles. I therefore request that this question should be separated from the Preamble and reserved until we come to examine Article 10.

M. VALLOTTON (Switzerland; speaking in French).—I am prepared to accept the French Delegate's proposal.

M. TSANG-OU (China; speaking in French).—I would remind the Committee that Article 10 was inserted in the Convention as a result of a statement of the position. On the other hand, Article 12 was inserted in order to some extent to counterbalance Article 10.

Since the Italian amendment raises the question of the terms of Article 23 of the Covenant, I should like to know why we have alluded to paragraph 1 of Article 23, but have made no reference to paragraph (e), which deals with equitable treatment for commerce. I am therefore in entire agreement with the French proposal, because in my opinion Articles 10 and 12 and the Preamble are quite inseparable.

Sir Hubert LLEWELLYN SMITH (Great Britain).—The British Delegation would be very glad if this question could be discussed in conjunction with Article 10, as proposed by the French Delegation. May I suggest that this proposal should be put to the Committee, in order to end the discussion ?

M. MATSUDA (Japan; speaking in French).—The Japanese Delegation has put forward certain amendments to Article 10 (1). Should the Committee decide to deal with the question raised by the Italian Delegation when the time comes to discuss Article 10, I will state our views with regard to the Italian amendment when that article is brought up for consideration.

The CHAIRMAN (speaking in French).—I propose, then, that the discussion on the Preamble be postponed until we come to Article 10.

M. BIGNAMI (Italy; speaking in French).—I accept your suggestion, Mr. Chairman.

THE CHAIRMAN (speaking in French).—The Italian Delegation agrees that the discussion on the Preamble should be postponed and taken in connection with that on Article 10. If no-one has any objection, this course will be adopted.

DISCUSSION OF ARTICLE 2

We now come to Article 2, which reads as follows :—

Subject to the stipulations contained elsewhere in this Convention, the measures taken by the High Contracting Parties for the regulation and execution of traffic in transit across the territories situated under their sovereignty or authority, shall facilitate the free transit of persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport, by rail and waterway, by the routes most convenient for international transit, it being understood that the crossing of territorial waterways is free. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the origin, points of departure, entry, exit or destination, or ownership of goods, mails or postal parcels, coaching and goods stock, or other means of transport in transit.

(1) For the Japanese Amendment to Article 10, see p. 96.

We will now read the French amendment, which proposes that Article 2 should be worded as follows :—

Subject to the stipulations contained elsewhere in this Convention, the measures taken, in conformity with their own laws, for the regulation and execution of traffic in transit, by the Powers across whose territory the transit takes place, shall facilitate the free transit of persons, goods, luggage, vessels, coaching and goods stock or other means of transport, by rail and waterway across the territories situated under the sovereignty or authority of the said Powers, and by the routes in use convenient for international transit. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the point of origin, departure, entry, exit or destination, or the ownership of goods, coaching and goods stock, or other means of transport in transit.

M. SERRUYS (France; speaking in French).—The object of the amendment proposed by us is perfectly clear. It is to substitute one phrase for another in the text submitted to us. The text before us says *and by the routes most convenient*. This is somewhat ambiguous. Briefly, it appeared to us that there would be a sufficient guarantee if we were simply to say *routes convenient*. As a matter of fact, if we adopt the expression *routes most convenient* we should be acting rashly and—I would add—should be opening the door to disputes, whereas what we all desire is that transit should be conducted by convenient routes,—it does not matter which routes, so long as they are convenient. Then, having eliminated this possible cause of dispute by putting *routes convenient* instead of *routes most convenient*—we fail to grasp the meaning of this superlative—we would, in addition, introduce a further idea, *all routes in use convenient*. What does this expression signify? It means, not merely, the routes convenient at the time of signature, but at any time when transit may be required. We wished to introduce an idea expressed by the British Delegation which at that time seemed untranslatable, that is to say, *for the time being*. I think the text suggested by us contains two improvements on this point; it gives an explanation and also provides a guarantee.

M. LANKAS (Czecho-Slovakia; speaking in French).—I notice that the French amendment further contains the words *in conformity with their own laws*. I do not think that the French Delegate has explained the object of this amendment.

M. SERRUYS (France; speaking in French).—That is a mere question of drafting, whereas the rest is a fundamental question. It merely carries out a principle which has been clearly established since the outset of our work; it emphasises the fact that these measures will be taken, not in virtue of an international text, but on the responsibility of each particular State,—which may then be called upon to justify its action before a court of justice. I consider that it is absolutely necessary to emphasise the fact that each State is responsible for the measures taken for the regulation and forwarding of traffic, and that each State may be allowed complete legislative authority in this respect, without interference. The motive which led us to suggest *routes convenient* rather than *routes most convenient* also induced us to make certain other slight alterations, upon which we can, I think, readily agree.

M. LANKAS (Czecho-Slovakia; speaking in French).—In my opinion this phrase has more in it than that. I think it might be construed to mean that each State remains entirely free to take such action as its legislation admits, whereas I interpret the Convention as meaning that each State is bound to make its own legislation conform to it. In these circumstances I think that the addition proposed by the French Delegation is inadvisable, not to say dangerous. Much to my regret, I am unable to accept it.

M. HOLCK-COLDING (Denmark; speaking in French).—I should like to make one small point with regard to the original wording of the article. In the tenth line appear the words *ou de la qualité des propriétaires, des marchandises (or the ownership of goods...)*. The French text contains a comma which in my opinion perverts the meaning. Similarly, on page 40 of the *Green Book* (French text), at the beginning

of the last paragraph but one (1) appear the words *qualité du propriétaire* (ownership). The same mistake appears in the amendment handed in by the Japanese Delegation, which also refers to the *qualité des propriétaires, des marchandises*; it will be seen that the same comma occurs. I notice, however, that in the amendment proposed by the French Delegation the comma is struck out of this phrase. I think the sense would be clearer if there were no comma between *des propriétaires* and *des marchandises*.

M. ALVAREZ (Chile; speaking in French).—The motion handed in by the Chilian Delegation relates to the form only and not to the substance of the article. We propose to delete, in Article 2, the words *across the territories... or authority*, the word *the* in the phrase *shall facilitate the free transit*, the words of *persons... international transit*, and also the last sentence of the article. The Chilian Delegation considers that this portion of the article is merely a repetition of that which is laid down in Article 1 and elsewhere in the Convention. In our opinion, this part of the text confuses the issue, or at all events overloads the article.

M. SERRUYS (France; speaking in French).—My reply to both M. Lankas and M. Alvarez is that they have misunderstood the meaning of the phrase to which M. Lankas very rightly called my attention, for I had failed to comment on it.

The fact that we have introduced the words *in conformity with their own laws* does not imply that we have the remotest intention of ever making use of our own legislation as a means of thwarting the carrying out of the Convention. Assuming that we sign a convention, and that our legislation in any way conflicts with the terms of this convention, there is only one thing for us to do, and that is to bring the former into harmony with the latter. We consider, however, that any measures taken by us are taken on our own initiative and in conformity with our own laws. Our intention was to avoid the possibility of external intervention on the ground that such and such a measure was not in conformity with the intentions of the *Green Book*; and certain views advanced here prove that the reservation which I have made is not entirely superfluous. In short, our intention is to avoid the possibility of being told that some measure, adopted in conformity with our sovereign rights and legislation, is not in accordance with the terms of some book, text or discussion, etc.

Whenever it can be said that such and such a measure taken by us is not in conformity with the terms of the Convention, there will be one thing, and one only, for us to do, and that is to make our legislation conform to the Convention. No one here has the least intention of quibbling in order to violate the spirit of the Convention. In my opinion, however, it is well to state that, though we are bound to make our laws conform to the terms of the Convention, we are entitled to adopt measures based on the laws of our own country, provided we conform to the spirit and the letter of the Convention. This, and this alone, was my motive for suggesting the insertion of the phrase in question.

M. NEUJEAN (Belgium; speaking in French).—I am very glad to hear the explanation given by M. Serruys, but I cannot avoid sharing to some extent the scruples of the Delegate for Czecho-Slovakia. The phrase *in conformity with their own laws* either means nothing else or, constitutes a condition restricting freedom of transit. If a restriction is intended, the Belgian Delegation cannot accept it. If the phrase is superfluous, why put it in, since it arouses a feeling of uneasiness? I would add that, if the intention is to emphasise respect for national law and sovereign rights, this principle is affirmed in the Preamble, and all kinds of guarantees are provided to ensure its maintenance. I would therefore urge the French Delegation to withdraw this phrase which, in my opinion, constitutes an element of real danger.

M. SERRUYS (France; speaking in French).—I realise that there may be some doubt as to the meaning of these words; I simply inserted them with the intention of reserving the rights of all who sign this Convention, and of enabling them to adhere to it fully and completely without any scruples on the ground of national interests. By

(1) See p. 287.

the insertion of these words, I intended to safeguard the interests protected by national procedure, if not by national law. But since it is merely a question of procedure, and since the effect of the article will be exactly the same, I have no objection whatever to withdrawing these words. They merely imply a recognition of the right of each State to use its own judgment in taking the necessary measures. I realise that certain delegations, to whose opinion I attach the greatest possible weight, because I know that it is authoritative, prefer that these words should not be inserted in the article. For my part I am perfectly willing to withdraw them.

The CHAIRMAN (speaking in French).—If no one else wishes to speak, I will put Article 2 to the vote, with the new wording proposed by the French Delegation. I will read the amended text once more :—

ART. 2. — Subject to the stipulations contained elsewhere in this Convention, the measures taken for the regulation and execution of traffic in transit, by the Powers across whose territory the transit takes place, shall facilitate the free transit of persons, goods, luggage, vessels, coaching and goods stocks or other means of transport, by rail and waterway across the territories situated under the sovereignty or authority of the said Powers, and by the routes in use convenient for international transit. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the point of origin, departure, entry, exit or destination, or the ownership of goods, coaching and goods stock, or other means of transport in transit.

The text was adopted, 30 voting for.

The CHAIRMAN (speaking in French).—We will now deal with the amendment handed in by the Brazilian Delegation. I call upon M. Barboza Carneiro of the Brazilian Delegation to explain his amendment.

M. BARBOZA CARNEIRO (Brazil; speaking in French).—The amendment proposed by the Brazilian Delegation consists in the addition of the following paragraph to Article 2 :—

States whose means of transport benefit by the advantages accorded under this article undertake not to establish preferential transport tariffs in favour of their nationals and to the detriment of nationals of the countries through which the transit takes place.

The Brazilian Delegation asks that this question should be referred for consideration by a sub-committee, which, should it see fit, would also consider the best form for a text to safeguard to some extent the rights of countries of transit, to be proposed to the Committee for insertion in the Convention.

The Brazilian Delegation, therefore, proposes that, before discussion in Committee, its amendment should be referred to a sub-committee composed, subject to their consent, of the Belgian, British, French, Italian, Japanese and Netherlands Delegations.

Sir Hubert LLEWELLYN SMITH (Great Britain). — It appears to me that this is a very important matter which seems scarcely ripe for treatment by a sub-committee at the present stage. If I have rightly understood the Brazilian Delegate in an informal talk which we had upon the matter, he has in his mind a difficulty which is entirely worthy of our consideration. At first sight, he appears to be proposing a remedy very much more extensive than the evil with which he wishes to deal,—a remedy which is probably outside our competence and which, as I think I can explain to him, would not, in effect, remove the particular grievance which he has in mind. I suggest that some of the delegates who are interested in this matter should meet, not as a sub-committee of this Committee, but as individuals, and talk things over. Until the matter has been brought a stage further, it is surely not right to propose a technical sub-committee, which would be quite in the air as to the course to be pursued. I therefore recommend that this matter should be postponed and discussed informally, so that something suitable for reference to a sub-committee can be laid before the Committee.

The CHAIRMAN (speaking in French). The Officers of the Conference consider this to be an excellent suggestion. If there is no objection, the discussion of the Brazilian amendment will be postponed (1). There still remain two amendments to Article 2,—those of the Serb-Croat-Slovene and Roumanian Delegations. The Officers of the Conference are of opinion—and I hope that you will agree—that, in view of the decisions taken with regard to Article 1, there is no occasion to vote upon these two amendments.

M. PERIETZEANO (Roumania; speaking in French). — In my opinion the Brazilian amendment should be considered at the same time as Article 4, which refers to charges.

The CHAIRMAN (speaking in French). — The Brazilian Delegation has proposed it as an amendment to Article 2. At the suggestion of the British Delegate, the delegates concerned in the question will discuss it amongst themselves, as the question is not yet ready for discussion, and the amendment will be considered at a later date. If there is no opposition I will consider the discussion of the Brazilian amendment to be postponed.

Does anyone else wish to speak on Article 2?

Article 2 was adopted in the form in which it was read.

DISCUSSION OF ARTICLE 3

The CHAIRMAN (speaking in French). — We now come to Article 3, the text of which is as follows :—

Duties. — Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport in transit, shall be exempt from any special duties in respect of their entry, exit, or transit; nevertheless, on goods in transit there may be levied duties intended solely to defray legitimate expenses of supervision and administration incurred on account of such transit by the Powers over whose territory it takes place. The sum total of the duties levied under this head, which must not, in any case, exceed that of the duties charged on free imports, may, however, be reduced, or even abolished, on certain routes.

I call upon M. Matsuda, the Japanese Delegate, who has an amendment to propose.

M. MATSUDA (Japan; speaking in French). — The amendment proposed by the Japanese Delegation is to the effect that the following addition should be made at the end of Article 3 :—

No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the origin, points of departure, entry, exit, or destination, or the ownership of goods, mails or postal parcels, coaching and goods stock or other means of transport in transit.

The same clause is contained in Article 2, and it appeared to us advisable to insert it in Article 3 in order to avoid any possible misinterpretation. I think that the Committee will agree with us on this point. I would add that, if the Committee so desires, I should be satisfied if this interpretation were inserted in the Minutes.

The CHAIRMAN (speaking in French). — Before proceeding with the discussion on the Japanese amendment, I suggest, if the Japanese Delegate agrees, that we begin by dealing with the amendments referring to the actual text of the article.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I may say in passing that we are entirely in agreement with the views of the Japanese Delegation with regard to their amendment, but I think that the amendment which I have handed in should be dealt with first.

(1) For continuation of this discussion see p. 183.

In line 3 of Article 3, after the word *nevertheless* we wish to take out the word *goods* and insert *such traffic*. It is quite a small point, but I think it must be admitted that the cost of supervision of transit may be appreciable in regard to persons as well as in regard to goods, and, therefore, we ought not to be limited entirely to goods in this matter. For example, I think that most countries make a charge for visas for passports. Charges of that kind ought to be covered, and I therefore propose to say *traffic* instead of *goods*.

Then, in line 6, we propose to insert the words *not exceeding an allowance reasonably required for this purpose*, in order to place a limit on the charges that may be made. I see that there is an Italian amendment which is practically the same. I imagine that the wording of all our amendments will be finally considered by the Drafting Committee, but it seems to us that in order to be clear on this point, we shall need a limit of this kind. It is not enough simply to say that the duties must be intended to defray legitimate expenses; they must not only be intended to defray, but they must not be more than are reasonably necessary to defray.

The necessity for these words is increased if you accept the third amendment which we have to propose, and which I observe is also proposed by a large number of other delegations, that is to say, the omission of the words *the sum total of the duties levied under this head... must not in any case, exceed that of the duties charged on free imports*. I think it must have occurred to many of the delegations that this is a somewhat artificial rule, to which the practice of many countries does not, and perhaps cannot, be made to conform.

I should add that the remaining words at the end of Article 3 to the effect that the sum total of these duties *may, however, be reduced, or even abolished, on certain routes* appear to us either unnecessary or dangerous. I am inclined to think that those who have put in these words must have had in mind the adjustment of railway charges under Article 4. We could hardly admit that transit duties to cover the expenses of supervision should be different on different routes. We therefore propose to omit the last sentence and insert the other amendments which I have read.

M. BIGNAMI (Italy; speaking in French). — The British Delegate has just stated that the Italian Delegation had handed in an amendment on exactly the same lines as that of the British Delegation. In our amendment we propose to omit the last sentence of the article beginning with the words *the sum total*, and to substitute the words *the sum total of the duties levied under this head shall be reasonable and may, moreover, be reduced or even abolished on certain routes*.

The reasons for our amendment are as follows. The establishment of a definite ratio between duties on transit traffic and imports appears rather an arbitrary measure calculated to restrict the freedom of action of the country through which the transit takes place, in respect of the free importation of its requirements, without producing any tangible result. Moreover, the option of abolishing the normal duties on certain routes renders the uniformity of the régime entirely illusory, and almost amounts to definite recognition of a differential régime. I do not know whether the Committee will accept the substance of these two amendments; if it does so, the Italian Delegation will have no objection to the adoption of the British proposal to the effect that both amendments be referred to the Drafting Committee.

M. SERRUYS (France; speaking in French). — The French amendment contains one feature in common with the amendments handed in by the British and Italian Delegations. All three are intended to avoid the establishment of a completely arbitrary relationship between transit and importation dues,—a point which has been fully brought out by the Italian Delegate. This relationship is based upon an economic doctrine which I, for my part, cannot accept. I am therefore inclined to think that it would be well to substitute for the last sentence something to the same effect as the British proposal. In my opinion, however, the text is not yet sufficiently clear. In short, what we require is a text taking into account all the features of the British and Italian proposals and also, up to a certain point, the features of the French proposal. I therefore think that it should be left to us to prepare a joint text for this part of Article 3 in time for the next meeting. I think that we shall reach an agreement without

difficulty, but it is not easy to improvise a wording during the meeting. I am quite sure that we shall be able to arrive at a unanimous agreement, and I request that the matter may be held over.

In order not to take up too much of the Committee's time, I would like to take the present opportunity of referring to the Japanese proposal. In principle, I see no objection to it, but in view of the fact that the article will have to be considered once more from the point of view of drafting, I should like to ask the Japanese Delegate whether his proposal could not also be referred to the Drafting Committee, more especially since, in its present form, it cannot be inserted in any part of the article.

The CHAIRMAN (speaking in French). — The Chilian Delegation has submitted an amendment which is now superfluous. The same applies to the amendment of the Serbian Delegation, which is ruled out in consequence of the vote taken this morning. I now come to the amendment handed in by the Roumanian Delegation.

M. PERIETZEANO (Roumania; speaking in French). — We are prepared to accept the amendment put forward by the Italian Delegation.

The CHAIRMAN (speaking in French). — I would suggest that the question be referred to a Sub-Committee composed of the originators of amendments,—that is to say, the British, Italian, French and Japanese Delegates. Would the Roumanian Delegate also like to be a member?

M. PERIETZEANO (Roumania; speaking in French). — Yes.

The CHAIRMAN (speaking in French). — Has anyone any objection? The Committee therefore decides to refer Article 3 to a Sub-Committee (1), composed of Sir Hubert Llewellyn Smith (Great Britain), MM. Bignami (Italy), Serruys (France), Matsuda (Japan), and Perietzeano (Roumania).

Sir Hubert LLEWELLYN SMITH (Great Britain). — The paragraph at the end of the French amendment is of an entirely different nature; I do not know whether it should be dealt with by our Sub-Committee.

M. SERRUYS (France; speaking in French). — The object of this amendment is to reserve an unrestricted right to apply legislation with regard to taxation on turnover, which I do not think is confined to France. The amendment is as follows :—

It is understood that this provision does not affect the imposition of revenue duties in connection with transactions which may take place during the warehousing or transportation of goods in transit.

Indeed it sometimes happens that goods imported for transit and warehoused, are sold whilst in the warehouse. This transaction is, in certain countries,—and especially in France,—subjected to a tax. In France this tax amounts to 1.10% of the turnover. You will notice that this is not a transit due; it in no way affects the scale of transport charges; it is simply a revenue tax imposed on merchandise in connection with which a commercial transaction has taken place. Transit, therefore, is not affected, but we must reserve the right to impose this tax. I attach no importance to the inclusion in the Convention itself of the text which I proposed. I shall be quite content if due note is taken of it in the records of the meeting. What I wish to avoid is the possibility of any misunderstanding with regard to this article. We are, if I may say so, drawing a hard and fast line between transport charges on the one hand, and, on the other, taxation in connection with transit and all revenue duties relating to commercial transactions. This distinction must be drawn, because it affects not only French legislation but also that of other countries. I do not necessarily ask for a change

(1) See p. 69, for the Report of this Sub-Committee.

to be made in the article itself,—if you consider that a note in the records of the meeting will suffice, I am quite ready to agree.

Sir Hubert LLEWELLYN SMITH (Great Britain). — We fully support the proposal made by the French Delegation to the effect that something of this kind should appear in the records of the meeting. We are unwilling to load the text of the Convention unduly.

The CHAIRMAN (speaking in French). — We are agreed; M. Serruys' reservation will be noted in the records of the meeting.

DISCUSSION OF ARTICLE 4

The CHAIRMAN (speaking in French). — We now come to Article 4. An amendment has been proposed by the British Delegation; I think that here again it is a question of drafting. The Swedish amendment comes next.

M. HANSEN (Sweden; speaking in French). — The amendment proposed by the Swedish Delegation involves the substitution of the words *tariffs which shall be reasonable according to the general principles governing the tariffs applied on the railways in question* for the words *tariffs which shall be reasonable*.

Our motive for advocating this change is that, in our opinion, no *reasonable railway tariffs* exist. The methods employed in fixing tariffs vary in almost every country. Tariffs are essentially dependent upon the volume of traffic, and upon the revenue which it is desired to obtain from operation. Even when we have adopted these two principles, the fact remains that *technical principles* (for instance the proportion, fixed between the mileage rate applied to *long* and *short* distances) differ in the more important countries such as England, France and the United States, and it is impossible to say that any one of these methods is the only right one.

From another point of view, the object of the Transit Convention is not at all to lay down general rules to be followed by the various countries in fixing these tariffs, but simply to ensure that *transit traffic* is accorded treatment as favourable as that accorded to internal or export traffic. We therefore share the opinion recently expressed in the Committee by the Czecho-Slovakian Delegate, M. Lankas, who mentioned in particular that normal internal rates should also be applied to transit traffic, and that the only exceptions authorised applied to rates introduced for the benefit of certain special industries.

In our view, the wording which we have proposed expresses these points better than the existing text; but it is, of course, possible to select another wording.

M. DE WALTER (Hungary; speaking in French). — I would point out that the amendments proposed respectively by the Greek, Swedish and Hungarian Delegations are interconnected. The Swedish Delegation suggests the application of tariffs, in accordance with the principle of general scales of tariffs,—in other words, general tariffs. The Greek Delegation proposes the application of internal tariffs; this also implies a system of general tariffs. In the report which I submitted at the Eighth Meeting (1), I explained that Hungary, in all agreements concluded up to the present time, had adopted the principle of absolute and reciprocal equality with regard to the application of tariffs. This involves the reciprocal application by any State, under identical conditions, upon the same route and in the same direction, of the same rates for traffic despatched by any other State which accords reciprocal treatment, as for national traffic.

In this connection I agree in principle—but in principle only—with the two amendments proposed by the Greek and Swedish Delegations, because I am also of opinion that the expression *convenables* used by the French Delegation, or *raisonnables*, which appears in the Draft Convention, is capable of such a wide interpretation that it would

(1) See p. 11.

almost inevitably lead to disputes. For this reason I should like to propose a wording for this clause similar to that contained in the Convention concluded between Italy and Hungary, and on the lines of the suggestion which I ventured to make during the Eighth Meeting,—namely, *the application of identical tariffs under identical conditions, over the same route and in the same direction.*

The second Hungarian proposal is merely the logical outcome of this principle of equality, which necessitates the categorical exclusion of any possibility of creating conditions favourable to a country's own traffic and detrimental to that of other Contracting Parties. Such conditions would make the general application of this principle impossible, and would provide each State with the means of affording special privileges to its own traffic. I refer to conditions such as that the goods must be of home origin, that they must be delivered direct to the station of despatch, and that the raw or semi-manufactured material of privileged classes of goods must be wholly or in part despatched by national routes.

M. POLITIS (Greece; speaking in French). — The Greek Delegation bases its policy on the following principles :

(1) That the policy of protection or free trade employed by the various countries must be exclusively carried out by means of customs tariffs, bounties or direct subsidies, and not by means of transport tariffs;

(2) That the establishment of tariffs, as regards both their rates and the method of their application, is a domestic question to be settled by each country, and cannot therefore be subjected to any form of control on the part of other countries, without affecting the sovereign rights of the country in question;

(3) That transit traffic, no matter what its origin, destination or nationality, must be treated on a footing of complete equality.

In the light of these principles the Greek Delegation considers that :

(1) The first part of Article 4, which lays down that *reasonable tariffs* shall be applied to transit, should be omitted; it is a provision which does not mean much, but which, nevertheless, when it comes to be applied, may well give rise to serious difficulties;

(2) A new paragraph in the following terms should be added at the end of the article :—

The participating States undertake to apply to transit traffic their domestic tariffs in force on the same routes.

This addition is the logical outcome of the deletion of the first part; if it were not inserted we might be suspected of wishing to apply prohibitive tariffs, which is not our intention at all. In order to avoid the possibility of such an interpretation, we must of necessity undertake in such circumstances to apply the internal tariff,—it being understood, of course, that this applies to goods of the same nature travelling by the same route and in the same direction.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation cannot accept the amendment of the Greek Delegation. We have ourselves submitted an amendment to Article 4, which is intended to make due allowance for certain conditions peculiar to each State in the application of tariffs.

Article 4 states that :—

The High Contracting Parties undertake to apply..... tariffs which shall be reasonable..... and proceeds as follows : as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes.

We propose to add *and to the necessity of giving preferential treatment to special products.*

I consider that a Convention of this kind should prevent States from fixing unduly high tariffs for transit traffic, but that it should not entirely prohibit States from occasionally fixing lower tariffs for their own goods without being obliged at the same time to grant the same tariffs to goods passing through the country. I will cite an example, taken of course from my own country, Italy.

As you know, Italy is a country of great length, and there is a great difference in agricultural and industrial development between the northern and southern parts of the country. For this reason we naturally make every effort to develop the industry and agriculture of the southern portion of Italy for reasons both of economic policy and justice. It was said just now that the development of certain industries could be assured by a simple alteration in the customs duties; but, nevertheless, greater advantages can be obtained in a more equitable manner by means of transport charges. In our endeavours to develop the southern portion of Italy, we are at times obliged—and in fact are doing so at the present moment—to adopt in certain particular cases tariffs which are below the cost of transport. For instance, this occurs in connection with the transport of oranges, lemons and other home-grown foodstuffs. Would it be fair to grant to similar goods of foreign origin which arrive at Genoa and cross Italy for the very purpose of competing with our produce in foreign markets, the same greatly reduced tariffs which, as I have already said, are below cost price?

We naturally attach very great importance to our amendments. We consider that in these circumstances it is only right that a country should be entitled to fix very reduced tariffs for its own goods, without being obliged to grant the same tariffs to goods in transit. Of course, there should be an obligation not to fix the tariff too high, and we notice that, with this very object, the word *reasonable* has been inserted here. In our opinion, therefore, the following phrase should be retained : *tariffs which shall be reasonable as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes.* We also desire the addition of the words : *and to the necessity of giving preferential treatment to special products.*

By laying down that tariffs must be reasonable, the misuse of tariffs on the part of certain countries may be prevented, but it would be quite unfair to forbid a country like Italy, which has special requirements, to adopt very low tariffs which are justifiable on grounds of equity and economic policy.

M. WINIARSKI (Poland; speaking in French). — “I was under the impression that the object of the General Conference was to approve the work done by the Commission,—serious work in which nearly all the delegations took part. I could readily understand that delegations which had not followed the debates, and had not perhaps thoroughly understood the decisions taken, might require an explanation, but I cannot understand why those who took part in our work should come here to demolish it.”

M. Politis, for whom I have a very great regard and even affection, dating from the time of joint labours at Paris, will forgive me for repeating the words which he used this morning (1) in connection with a proposal similar to that which has just been made. Of course our text is by no means infallible,—it is not a text *ne varietur*—but it is only right to point out that we had interminable discussions upon this point also, and that the text before us is the result of ripe reflection and, as always, of a compromise.

The Polish Delegation is not altogether satisfied with the word *reasonable* in the text. We must bear in mind that a tribunal will have to enforce respect for this word and to decide disputes. The use of this word will lead to very lengthy proceedings before the tribunal of the League of Nations; but since we have been unable to find a more suitable word, it will perhaps be better to retain it. We must also remember that the question before us involves interests which, though not always reconcilable, are nevertheless legitimate and worthy of respect. Perhaps I should remind you of the ancient distinction drawn in Roman Law, and say that the acceptance of the formula proposed by the Greek Delegation will amount to a *damnum emergens* for the countries traversed, and that its rejection will constitute a *lucrum cessans* for States which wish to send their produce across the territory of another.

I will not repeat all the arguments in favour of adopting the text proposed. The Polish Delegation entirely agrees with the views expressed by the Italian Delegate.

(1) See p. 45.

M. SERRUYS (France; speaking in French). — I should like to summarise the refeatures of a debate various which, owing to the variety of the subjects referred to, is becoming rather confused. We have before us a number of proposals which vary in degree only, and, on the other hand, we have a number of proposals which are fundamentally different. One view, which was advanced in its most logical form by the Greek Delegation, is that transit tariffs should be the same as internal tariffs. This view is also advanced by the Hungarian Delegation in a somewhat different form; there are differences with regard to certain points, and the method of application is very slightly modified, but the principle is the same. Then there is the view advanced by the Swedish Delegation, which is very circumspect, but amounts to the same thing, since it lays down that *tariffs which shall be reasonable according to the general principles governing the tariffs applied on the railways in question should be adopted*. This implies tariffs which, though they will not be internal tariffs, will closely resemble them. This is the proposal advanced in a rigidly theoretical form by the Greek Delegation, in an applied and consequently somewhat different form by the Hungarian Delegation, and in a faintly similar but somewhat attenuated form by the Swedish Delegation.

All these proposals embody the same principle,—the tariffs to be applied are internal tariffs. As the Polish Delegate has stated, this policy was discussed at great length during the Conference at Paris. It was rejected for a number of reasons, but I will merely quote those which are most obvious. One reason was that, as a general rule, the situation varies greatly in the different States, and it is impossible to lay down a general rule in the matter. It is contrary to the interests of some States to apply their domestic tariffs, to certain classes of products, for example; and to the arguments advanced by the Italian Delegate I could add others, drawn from the present situation of my own country. As a result of the devastation which has taken place, we have to reckon with the fact that certain industries which were formerly concentrated, are now decentralised. In the textile industry, for instance, formerly the various processes of combing, spinning and weaving were generally concentrated in different towns; now, in consequence of this devastation, the spinning industry is dead, and in order to revive it we are contemplating the introduction of special tariffs for certain classes of goods. The matter is under investigation, and comes under the same heading as the example quoted by the Italian Delegate. Here is an instance in which an internal scale of tariffs, lower than a transit scale, is justified; but the converse may also be justified. Entirely different circumstances may therefore arise and, by establishing a general rule, we should fail to take into account all possible contingencies, and these it is which are at the root of the different economic situations prevailing in different countries. The application of a rigid general rule would therefore be *summum jus, summa injuria*. I think that we must avoid in any form the theory of the compulsory application of internal tariffs to transit traffic. I would here like to point out to the Italian Delegate that he appears to be arguing on the assumption that the proposal of the Greek Delegation is already embodied in the Convention. He is, in fact, asking permission to do something which the Convention does not forbid. His amendment, therefore, though it is of great interest and constitutes a valuable guide for the Committee in its work, appears to me superfluous.

There is another amendment, the grounds for which have not yet been explained, but which may be of great use because it establishes a new point of view. I refer to the amendment of the Roumanian Delegation. Though I do not know the exact form in which it will be submitted, I should like to ask you to consider on what lines we should proceed, assuming that we decide to discard the idea of assimilating transit tariffs to internal tariffs. We must try to find a more precise text for Article 4, especially in regard to one particular point,—the word *reasonable*, which is not altogether satisfactory. Some have thought that this word would leave the door open to arbitrary measures, and that it would render possible the imposition of very different rates, varying according to internal conditions, such as the abundance of the coal supply, the condition of routes, etc. But obviously these conditions must be taken into account in the various countries. The French Delegation has suggested a slight alteration introducing the word *équitable* in place of the word *raisonnable*. The word *équitable* implies an element of proportion, some kind of a standard, and, above all, a profound sense of justice, which, in my opinion, will be the best guarantee for the

successful application of our Conventions. Moreover, we selected the word *équitable* because it embodies the idea of equity, and for the maintenance of this principle two guarantees are provided. There will be some organisation selected by the Council of the League of Nations to effect a friendly settlement of minor disputes, and there will be the Court of International Justice. If, therefore, we use the word *équitable*, we can be sure that these two bodies will, by means of their opinions, or judgments pronounced *ex æquo et bono*, completely satisfy our requirements, and I am of opinion that the substitution of the moral idea embodied in the word *équitable* for the conception of logic conveyed by the word *raisonnable* is the only amendment which the text requires.

M. HOLCK-COLDING (Denmark; speaking in French). — I should like to give you a practical idea of what is taking place in my own country. Owing to the special requirements of agriculture, we adopt the following procedure : — We apply to goods coming from another country the same tariffs as to similar goods travelling the same distance between two points in our own country; but our Minister for Agriculture refunds a portion of the charges to the farmer receiving the goods. In this way the railway rates remain unchanged, and the special interests of our farmers are protected.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation is prepared to accept the French Delegation's proposal. We naturally look to the substance rather than the form. It is, of course, understood that nothing in the Convention will hinder the application of tariffs on the lines suggested in the amendment moved by the Italian Delegation. I should like this statement to be inserted in the records of the meeting and in the General Report.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation entirely agrees with the change of wording which has been suggested by the French Delegation, and which, we are happy to find, meets with the approval of Italy, namely, the substitution of the French word *équitable* for the word *raisonnable*. We fully accept that change, but I would point out that the English translation of *équitable* is *reasonable*. The English word *reasonable* is not the same as the French word *raisonnable*, and I suggest that the word *reasonable* should remain in the English text, because it corresponds with the word *équitable* in the French text. I would further point out that one change which has been proposed by the French Delegation, and which corresponds to an amendment also moved by the British Delegation, is the changing of the word *favour* to *facilitate*. I hope that that will be adopted. I also hope that after this very interesting discussion, it will be possible to come to an agreement with regard to Article 4 before we leave this evening.

M. HANSEN (Sweden; speaking in French). — I support the proposal of the Italian Delegate that a statement conveying the intention of the amendment should be embodied in the records of the meeting and in the General Report.

M. DE WALTER (Hungary; speaking in French). — As I have already stated, Hungary works on the principle of complete equality. It was this which led me to submit my proposal, and I hope that the Committee will understand it aright. Should the Committee not accept it, it will, at all events, have been placed on record.

M. PERIETZEANO (Roumania; speaking in French). — The question will have to be divided up, for though we are in entire agreement with the proposal made by the French Delegation, we wish to add at the end of the article the words *except in case of nationals of the country of transit*.

The CHAIRMAN (speaking in French). — We will now vote upon the French amendment to Article 4, which reads as follows : —

The High Contracting Parties undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock, or other means of transport on the routes administered by the State, or under concession, irrespective of the points of departure or destination, tariffs

which shall be reasonable (French text, *équitable*) as regards both their rates and the method of their application, having regard to the conditions of the traffic including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to facilitate international traffic as far as possible.

The French amendment was adopted, 31 voting for.

M. PERIETZEANO (Roumania; speaking in French). — This morning I was perhaps too brief, and this neglect on my part has led to the unanimous rejection of my amendment, though the idea upon which it is based is bound ultimately to triumph. I do not bear any grudge, however, and I will not take my revenge by occupying more of your time than is necessary.

Article 4 lays down that dues may only be levied upon routes operated by the State or under concession. I am not sure what this implies. Does it only refer to routes upon which transport traffic proceeding under its own power is prohibited, or does it include routes which may be used by vessels or barges proceeding, for example, under their own power? In France, Belgium and many other countries, there are canals used, not only by national vessels, but also by other craft proceeding under their own power. If a State has constructed these canals, and provides for their upkeep and supervision and for a service of information (when I say supervision, I do not mean supervision in the sense of Article 2, which refers to the supervision of goods in transit, but rather supervision for the prevention of possible accidents), I should like to know whether this State may make the use of such routes subject to the payment of dues. I incline to think that it should. Whenever a State has spent money on the construction or upkeep of canals or has organised a staff to deal with them, it should be able to levy dues. Of course, we are only dealing with routes operated by the State or under concession. I am sure that you have no wish to prevent States from spending large sums on the cutting of canals.

I proposed the following addition to Article 4 : —

Similarly, a reasonable scale of dues intended to cover the expenses of construction, upkeep, supervision, lighting, etc., in addition to charges collected for services rendered, such as lockage, life-saving, etc., shall be levied upon every means of transport which is permitted to pass over routes not subject to monopoly.

For instance, if goods are transported by rail from A to B, the dues collected are divided into two portions. The first portion represents the actual cost of transport, the second represents expenses in connection with the construction of routes, general expenses, etc. With regard to river transport, in my opinion, dues intended to cover the expenses of upkeep or buoying should be maintained.

M. NEUJEAN (Belgium; speaking in French). — Tolls are not dues.

M. PERIETZEANO (Roumania; speaking in French). — I know that these charges are called tolls, but they are none the less dues, though not supervision-dues under the terms of Article 2. If you prefer not to mention tolls, that is another matter. We must, however, be clear on the point. I have submitted my proposal because in my opinion tolls cannot be abolished.

M. SERRUYS (France; speaking in French). — The Roumanian amendment is very interesting, but I do not think it relates to this article. It deals with tolls. But tolls are not transport rates; they are charges which are also collected upon goods not in transit. Moreover, this question of tolls should not be dealt with under Article 4, — it should have been dealt with under Article 3, which relates to charges and dues of this nature. In order to clear up the matter, — and I think this could be done in a very few minutes, — I would suggest that the Roumanian Delegate be made a member of the Committee which is to meet to-morrow to decide upon the text of Article 3. By this means I think that we could decide the proper place for this question...

M. PERIETZEANO (Roumania; speaking in French). — It is for the Committee to say whether it wishes to retain or to abolish tolls.

M. SERRUYS (France; speaking in French). — Tolls are levied on goods in transit as well as on internal traffic.

M. PERIETZEANO (Roumania; speaking in French). — If that point is settled, the rest is easy.

M. SERRUYS (France; speaking in French). — There is still one more question of some importance to be dealt with, but we must come back to it later; this is not the time to discuss it. I refer to the addition to line 13. I do not propose to open the discussion now, but the question is of some importance. The last sentence of Article 4 begins : *No charges, facilities or restrictions...* The word *restrictions* has led to a confusion of ideas amongst certain delegations with the members of which I have conversed. This word relates to tariffs. It does not preclude any reservations which certain States may make with regard to traffic on certain monopolised routes, nor does it preclude the reservation of flag rights. The article relates solely to tariff scales. As this is a very important point, I think that this fact should be definitely stated in the Final Protocol.

The CHAIRMAN (speaking in French). — If no-one has any objection to offer, I shall take it as agreed that a statement embodying M. Serruys' remarks is to be inserted in the Final Protocol.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I rise merely in order to ask for an explanation. Is it understood that the Roumanian proposal is to be discussed by the Sub-Committee on Article 3? I should like to say it has nothing whatever to do with Article 3. I consider that it refers to Article 4.

M. SERRUYS (France; speaking in French). — As a matter of fact, I do not think that the Roumanian proposal is directly connected with either Article 3 or Article 4, and it does not deal with dues specially connected with transport traffic, since it also refers to internal traffic. Neither does it relate to the cost of transport, since there is no question of transport tariff scales. In these circumstances, perhaps the Roumanian Delegation would be satisfied if the Committee took note of its proposal and recorded a statement in the Minutes to the effect that *Articles 3 and 4 do not refer to tolls, and that each country retains complete liberty of action in this respect.*

M. PERIETZEANO (Roumania; speaking in French). — I have no wish to labour the point, more especially as Roumania has hardly any canals and therefore the question of tolls hardly arises in her case. I had in mind other States, and more particularly France, when I raised the question.

The CHAIRMAN (speaking in French). — As the Roumanian Delegation is now satisfied, if no-one else wishes to speak I will put Article 4 to the vote. It reads as follows:—

The High Contracting Parties undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock, or other means of transport, on the routes administered by the State or under concession, irrespective of the points of departure or destination, tariffs which shall be reasonable (*équitable* in the French text) as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to facilitate international traffic as far as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the through journey has been or is to be accomplished.

As you will see, this version of Article 4 is composed of the French amendment and of the last sentence appearing in the *Green Book*.

Article 4 was adopted in this form.

The meeting adjourned at 7.45 p.m.

FOURTH MEETING OF THE PLENARY COMMITTEE

(Thursday, March 17th, 1921, at 6.30 p.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 3 AND DISCUSSION OF ARTICLE 3 (CONTD.)

The meeting opened with M. Loudon, Vice-Président of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLE 3

The CHAIRMAN (speaking in French).—You will remember that the Committee detailed a Sub-Committee to deal with the question of the last paragraph of Article 3 (1). I call upon the British Delegate to report on behalf of the Sub-Committee.

Sir Hubert LLEWELLYN SMITH (Great Britain; rapporteur).—The Sub-Committee was composed of representatives of the French, Italian, Japanese, Roumanian and British Delegations. After considering the various amendments to Article 3 proposed by the above Delegations and certain others, we unanimously agreed to adopt a new text for Article 3, which I will now proceed to read.

ART. 3. — *Duties.* — Persons, luggage, goods, vessels, coaching and goods stock or other means of transport in transit shall be exempt from any special duties or charges in respect of their transit, including their entry or exit; nevertheless, on this traffic in transit there may be levied duties or charges intended solely to defray expenses of supervision and administration incurred on account of such transit. The rates of any such duties or charges shall correspond as nearly as possible to the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding article.

I think that the Committee will see that all the points to which the various delegates attached importance are provided for in that form of words. There is one point, however, which was raised by the Roumanian Delegate in discussion yesterday, namely, the question of tolls (2), and this Sub-Committee was asked to look into it. What we have to report—quite provisionally—is that the question of tolls has reference rather to Article 4 than to Article 3; but if the Committee so wishes, the Sub-Committee will be glad to continue its work and devote further study to the question whether any alteration or addition to that article is necessary in respect of tolls.

M. SERRUYS (France; speaking in French).—The question of tolls was very carefully considered, and the Sub-Committee was of opinion that whilst the question could be deferred until the discussion of Article 4, it was obvious that an exchange of views ought to take place. The question must either be excluded altogether from the Convention or else incorporated in it, but in any case some solution must be found. A statement must be included in the records, in the Report or in the Final Protocol, to the effect that the question of tolls is not within our competence; otherwise, we must consider it and devise some solution for it; it is out of the question to allow any doubt on the point to remain.

(1) See p. 61.

(2) See p. 67.

M. PERIETZEANO (Roumania; speaking in French).—In my opinion the question of tolls must be dealt with in the Convention, but I agree with the French Delegate when he says that it requires careful study and an exchange of views, and I therefore support M. Serruys' proposal that the question should be postponed, and entrusted either to the Committee on Article 3, or to some other Committee, for the preparation of a text. It is for you to decide this matter, but I think I shall succeed in convincing you that the question must be dealt with. This also applies to my amendment to Article 4 relating to differential treatment for national shipping. I propose that both these questions be referred to a Sub-Committee, either that which dealt with Article 3 or any other which you may care to appoint (1).

M. Demetrio RIBEIRO (Brazil; speaking in French).—I entirely agree as to the régime to be introduced, and I fully understand the necessity for it. Nothing could be fairer. There may, however, be countries in whose budgets are included entry and exit duties representing a considerable sum. Such countries would require a certain amount of time, in order to adapt themselves to the new régime. I should like to enquire whether it would not be possible to allow them a reasonable time-limit to adjust their budget to it; this period should be at least one year, since, as a rule, budgets of all countries are drawn up for that period. The Committee would in this way not be obliged to revoke its decision, and the States concerned would be enabled to approve the provision without delay.

The CHAIRMAN (speaking in French).—I suggest that the Brazilian Delegation's proposal should be referred to the Sub-Committee on Article 3. Both M. Ribeiro and M. Tsang-ou will be members.

M. TSANG-OU (China; speaking in French).—The Chinese Delegation supports the Brazilian proposal, and also shares the views of the Roumanian Delegation on the subject of tolls.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French).—I propose that the following portion of the original text should be retained :—

The sum total of the duties levied under this head, which must not, in any case, exceed that of the duties charged on free imports, may, however, be reduced, or even abolished, on certain routes.

Sir Hubert LLEWELLYN SMITH (Great Britain; rapporteur).—This passage was omitted in our draft, because we came to the conclusion that, as regards these duties and charges of supervision and administration, it was desirable to establish the principle that they should only be applied—and this is also proposed in the Japanese amendment—under the conditions of equality set out in detail in Article 2. You will observe that one of these conditions of equality in Article 2 is that there should be no differentiation dependent upon the points of entry into or exit from the territory. That condition appeared to obviate the possibility of any difference on different routes. On the other hand, if the Committee considers that permission ought to be given to vary the charges for supervision according to routes, we should then have to make some reservation with regard to our last sentence, which states that *the dues must be imposed under the conditions of equality laid down in the preceding article*. It would then be necessary to stipulate that such dues or charges *may be reduced, or even abolished on certain routes, but that in all other respects they shall be applied under the conditions of equality laid down in the previous article*.

That, however, raises a point which is more than a mere matter of drafting, and I cannot speak for my colleagues on the subject. The adoption of this course would meet the views of the Japanese and Serbian Delegations. In my capacity as rapporteur perhaps I should refrain from expressing the view of the British Delegation on this question.

(1) See p. 112. Report of Sub-Committee.

M. MATSUDA (Japan; speaking in French).—If you will allow me, I should like to make a few remarks with regard to the draft prepared by the Sub-Committee. Possibly the Serbian Delegate has not fully grasped the Japanese proposal. We should like to add to Article 2 the enumerations *persons, goods, vessels, etc...* This enumeration is embodied in several articles. In our view our amendment would not affect the meaning of the original text of Article 3. The new version drafted by the Sub-Committee this morning is to the same effect, and I think, therefore, that our proposal will be acceptable to the various delegations. In a word, the text proposed this morning calls for the same interpretation as the motion proposed by the Japanese Delegation.

M. WINIARSKI (Poland; speaking in French).—In my opinion, the passage which the Serbian Delegate proposes to retain in the form in which it appears in Article 3 is not contrary to the principle of equality of nations, or to that of equality of treatment, because this differentiation is not based on difference of nationality, origin or point of departure, but on technical conditions which may vary on different routes. It seems to me that the retention of this passage, which is omitted in the most recent version, would be calculated to facilitate transit to some extent.

M. HOLCK-COLDING (Denmark; speaking in French).—I think the amendment proposed by the Sub-Committee involves a weakening of the text of the *Green Book*. The *Green Book* lays down at the end of Article 3 that *the sum total of the duties levied under this head, which must not in any case exceed...* I should like the Sub-Committee to explain the reason for this change.

Sir Hubert LLEWELLYN SMITH (Great Britain; rapporteur).—I do not know whether, as rapporteur, I am acting correctly, but if I may express the views of the British Delegation, I would say that we have no objection to the re-introduction of the words which have been omitted, provided it be made quite clear that the reduction or abolition of these duties or charges on certain routes must be on the ground that the cost of supervision is lower on those routes. That would avoid a certain inexactitude which has crept into the text through our having laid down that the rates of the duties shall correspond as nearly as possible to the expenses which they are intended to cover. That seems to imply that if the difficulties of supervision on one route are much greater than on another, it might be possible to establish different charges.

If it meets the views of the Committee, the British Delegation would be in favour of a wording such as the following: *Such dues may be reduced, or even abolished on certain routes on the ground of differences in the cost of supervision, but in all other respects they shall be applied under the conditions of equality defined in the preceding article.*

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — I accept this wording.

M. SERRUYS (France; speaking in French). — In my opinion this wording is somewhat unwieldy, coming as it does at the end of the paragraph; I would suggest that the Drafting Committee should bring it into agreement with the rest of the paragraph. On the question of principle, however, I agree.

The CHAIRMAN (speaking in French). — If the principle is accepted by the Committee, we will instruct the Drafting Committee to find a more accurate wording for this passage.

M. PERIETZEANO (Roumania; speaking in French). — To my mind the question is rather more important than a mere matter of drafting. It is fraught with all kinds of consequences.

What after all is the point at issue? It is this, — whether dues may vary on different routes. Let us consider the arguments in favour of this, and the consequences which may ensue. As soon as we know what we want, it will be easy to find a wording.

We wish to be able to levy different dues on different routes. But does not this contradict what we have laid down further on? There would indeed be equality of

treatment for the various nations, but only on the same route. I will take an example from my own country. In order to cross Yugo-Slavia, should I have to make a *détour* to the northwards, and cross the frontier at a point where the dues were more reasonable? This would really be equivalent to making Roumania pay heavier dues than the other neighbouring countries. Yugo-Slavia would contend that she was making no distinction between nationalities, and that we could, if we liked, enjoy the same rates as other countries. Yet you appear to imagine that such a state of affairs does not constitute differentiation between nationalities! Under such a system it would be possible to make a particular country pay dues to any amount desired, by arbitrarily fixing the dues chargeable on a certain route which it is bound to use, — which it cannot avoid using. And, after all, for what reasons? We are told the reasons are technical. Let us consider them.

In my experience of the operation of roads, railways and canals, these differences have never been taken into account in the fixing of dues. Do we have different rates on the railways according to whether the journey is uphill or downhill? Yet it is obvious that the cost of traction is not the same in the two cases. Has the question whether ten kilometres of track are on a rising gradient or on the level ever been raised in order to make the due vary with the cost of traction? Certainly not. Nevertheless, transport over 50 kilometres on a mountain railway involves a much more expensive operation than 50 kilometres on the level. But, you say, the dues are fixed at an average rate. And will you not constantly be saying: "There are more thieves on such-and-such a route than on another, and we must therefore employ three policemen per kilometre instead of two." In the words of a Roumanian proverb, that would be cutting hair with an axe. We all agree that these dues will be very small. But is it really necessary to go into such detail as to make them vary according to the route? I see in such a scheme only a means of cloaking a system of differential treatment.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — The same terms would be applied to all.

M. PERIETZEANO (Roumania; speaking in French). — Thank you for allowing me favourable rates by some route in the North of Serbia! I am not going to make a *détour* around Serbia in order to use such a route. When I leave Roumania I propose to cross the frontier where it suits me best. All you have to do is to impose unfavourable rates upon the routes which by reason of the geographical position of my country I am compelled to use. I do not suggest that you intend to do so; I am merely considering the possible consequences of such a measure. I maintain that the establishment of different dues on different routes will practically undo what we have already accomplished. I will go further. I cannot see any reason for such a course, because it has never occurred to anyone, in classifying rates on routes possessing very different characteristics, to take into account differences between mountain and ordinary railways, or between ascending and descending routes. With regard to dues of minor importance, the introduction of varying rates is a matter of complete indifference unless the intention is to introduce differential treatment, and for this reason it is inadmissible.

M. WINIARSKI (Poland; speaking in French). — I cannot use the example quoted by the Roumanian Delegate, because he has only considered one particular route. But I think that the British Delegate has alluded to the difficulties which might ensue from the establishment of different administrative régimes. The position in a State which operates all the railways within its territory is very different from that in a State in which all the railways are worked by private companies. I therefore consider that this clause serves a useful purpose, and I ask for its retention.

M. POLITIS (Greece; speaking in French). — If we accept the principle that these dues in each port, or at each point of entry, are to be equivalent to expenditure actually incurred, it is quite impossible to stipulate that they should be identical at all points of entry into any one country. I will take an example.

In Greece there are two ports, amongst others, which are available for northbound traffic, — the Piraeus and the Port of Volo. The customs authorities of the Piraeus have granted a concession to a contractor for the loading, 'unloading and packing of goods. The same has been done at Volo, but with this difference, that whereas the Piraeus contractor receives a commission of 10 % in return for his work, the contractor at Volo only receives 5 %. It will therefore be necessary to fix the dues at Volo at 5 % and at the Piraeus at 10 %; it is impossible to fix an equal rate for both ports. Doubtless the same rate should be applied indiscriminately to all countries in each port, but it is quite out of the question to collect the same dues in both ports.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think the arguments advanced by the Roumanian Delegate really constitute a justification of our proposal. He has himself said that there is a great difference in the working expenses of railways, according to whether the line is laid in mountainous or flat country. The British Delegate has given us one example; I will take another. We must not forget that the General Convention on Communications and Transit will apply not only to railways, but also to navigable waterways. I remember that in the Commission of Enquiry the Netherlands representative, M. van Eysinga, endeavoured to obtain what we are now seeking; he wished navigable waterways not to be all dealt with alike, because there are some upon which no dues are collected.

Like the British, French, Greek, Polish and Netherlands Delegates, and for the same reasons, we request that the last lines of the original text of Article 3 of the Draft Convention should be added to the amendment.

M. LANKAS (Czecho-Slovakia; speaking in French). — I must confess that I am more than astonished, — I am thunderstruck at the course which the discussion has taken. I feel it incumbent upon me to remind you that there is a certain green document which will throw some light on the matter. The passage to which I refer is the following(1) :—

The very small amounts involved in these duties made it possible to attempt, at the end of the article, a derogation from the principle of equality in order to facilitate the arrangement of special exemptions, more particularly between neighbouring States.

The statements made by various delegates impel me to trace the origin of this passage. We said to ourselves that the phrase *freedom of transit* implies that there are to be no customs duties on transit traffic, and no special dues to burden the transit of goods, either at the point of entry or exit. We then remembered the existence of certain statistical dues, and we agreed that these dues should be admitted. Subsequently it occurred to us that there were sundry minor dues, such as dues for supervision and administration, and we came to the conclusion that, as they had nothing to do with customs duties, and were only for very small amounts, they should be authorised. This was done. The next question was whether transit traffic might perhaps be hampered by the misuse of these dues. In order to prevent this, it was suggested that a maximum should be fixed for such dues as were collected, even when goods were imported free. It was pointed out that in some cases these dues would not be collected, and that, as the Serbian and Netherlands Delegates justly observed, the result would be inequality of treatment. But these dues, it was thought, were so small that there was no reason to fear that the principle of equality would be affected, and it was conceded that in certain cases, — for instance, when goods entered a country by a different port or used another route, — these dues need not be charged or might at least be reduced. That is the history of the passage.

If we set ourselves to apply the principle of equality too strictly, or if we concede so much as the possibility that freedom of transit may be affected by the collection of such dues, we are entering upon a course which I, for one, am not prepared to adopt. In my opinion, therefore, there is no reason why we should not accept the amendment proposed by the Serbian Delegate, and retain the passage at the end of Article 3 in the *Green Book*.

(1) See p. 288.

I must apologise for having taken up so much of your time, but I was so overcome with astonishment that I felt bound to speak.

The CHAIRMAN (speaking in French). — I will now put Article 3 to the vote in the form proposed by the Sub-Committee.

The motion was carried, 29 voting for.

I will now put to the vote the additional clause proposed by the British and Serbian Delegates.

The motion was carried, 25 voting for.

The CHAIRMAN (speaking in French). — The wording of Article 3 will therefore be as follows :—

ARTICLE 3. — *Duties.* — Persons, luggage, goods, vessels, coaching and goods stock or other means of transport in transit shall be exempt from any special duties or charges in respect of their transit, including their entry or exit; nevertheless, on this traffic in transit there may be levied duties or charges intended solely to defray expenses of supervision and administration incurred on account of such transit. The rates of any such duties or charges shall correspond as nearly as possible to the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding article. Such dues may be reduced or even abolished on certain routes on the ground of differences in the cost of supervision, but in all other respects they shall be applied under the conditions of equality defined in the preceding article.

Article 3 was adopted in this form.

M. SERRUYS (France; speaking in French). — It is of course understood, Mr. Chairman, that we accept the principles laid down in this article, but that it will be referred to the Drafting Committee for a revision of the wording.

The meeting adjourned at 7.45 p.m.

SEVENTH MEETING OF THE PLENARY COMMITTEE

(Friday, March 18th, 1921, at 11 a.m.)

DISCUSSION OF ARTICLES 5 AND 6

The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 5

The CHAIRMAN (speaking in French). — We now come to Article 5, in regard to which amendments have been submitted by the French, British, Italian and Uruguayan Delegations.

Mr. MANCE (Great Britain). — To this article the British Delegation has proposed several small amendments, one of considerable importance.

Firstly, the British Delegation proposes to omit the words *dans l'un et l'autre cas*, in the fourth line of the French text. These words do not occur in the British text, and the English text of this article, as drawn up by the Provisional Committee, was the original one.

Secondly, in line 4 of the British text, we propose to add after word *health* the word *morals*, in order to cover certain cases which are not altogether covered by *public health*, such as obscene literature or the importation of alcohol, which are not dealt with by other conventions.

In line 5, after the word *plants*, the British Delegation proposes to add the words *or of fraud*. This amendment is prompted by the same motives as the amendment of the French Delegation; its object is to prevent a State from being compelled to afford transit for such objects as forged notes or forged postage-stamps, and it is also intended to defeat evasions of the customs regulations. This might perhaps not be met entirely by the provision on the measures to be taken to ensure that goods are *bona fide* in transit. I will give an example. In our country—and I fancy in other countries—there are regulations limiting the size of packages containing various goods which are easy to smuggle. We have a regulation that tobacco entering the country, whether for transit or for import, must be packed in packages over a certain size, and we have brought forward this amendment in order to avoid any obligation to accept small packages which might be introduced for fraudulent purposes.

In line 8 of Article 5, after the word *transit*, we propose to insert the words *and that persons in transit are in a position to complete their journey*. That is simply intended to cover the case of transmigrants who arrive without a through ticket, or without the funds necessary to complete their journey. I think that everyone will agree that the Convention is not intended to allow the admission of such persons in transit.

The final amendment is the addition of the following new paragraph :—

Nothing in this Convention shall affect any measures which any of the participating States are, or may be required to take, by virtue of any general international conventions or of any such conventions which may hereafter be concluded under the auspices of the League of Nations, with respect to the export or transit of opium, arms or any other class of traffic.

General conventions of this nature concluded under the auspices of the League of Nations are covered, so far as the Members of the League are concerned, by Article 9,

but there may be signatories to this Convention which are not Members of the League, and it is therefore necessary to include some provision of this kind.

M. SERRUYS (France; speaking in French). — A series of proposals of very different kinds have been laid before us with reference to this article. I intend now to explain the purport of the French amendment, in order that you may be in a position to appreciate its scope and intentions. I shall then proceed to deal with the questions arising out of the British amendments submitted by General Mance.

The French amendment is two fold. We propose the insertion after the words ... *or security, or with a view to the prevention of diseases of animals or plants*, of the words *or to ensure fair competition, in conformity with the intentions of Article 23 (e) of the Covenant*. Our object is to prevent certain the creation by certain countries of a false impression with regard to the origin of certain goods by sending them through a transit port, thus endowing them with an assumed nationality. Many States exercise a certain degree of control with regard to this matter, in order to prevent a practice which is absolutely contrary to the spirit of commercial honesty and fair dealing contemplated in Article 23(e) of the Covenant. Our amendment therefore is a considerable improvement, and I regard it as an opportunity clearly to establish the connection between the Convention before us, which is merely a convention on transport, and the further measures which we propose to take to purify the conditions of international trade. I think, however, that the reference to Article 23 is superfluous and would merely burden the text unnecessarily. We might only retain the words *or to ensure fair competition*. This is the first part of the French amendment.

The second element in the amendment aims at establishing a reservation—which appears essential—regarding certain international Conventions which are now in course of preparation relating to international rivers. International rivers are under a special régime which is to be more liberal than that to be applied to national rivers. In conformity, therefore, with what has already been laid down, we propose to say that *this provision shall not apply whenever transit is carried out by vessels proceeding by waterway under customs seal*. We might even have said *by international waterway*. The object of this reservation having been made clear, I shall, however, be quite content if it is recorded in the Minutes and the question shelved until the time comes to consider international rivers, or the special statute for each river under the terms of the General Convention on International Rivers. I have therefore no objection to withdrawing the second portion of the amendment, provided it be mentioned in the Minutes.

I now come to the various British proposals. The first is to delete of the words *dans l'un et l'autre cas*. I agree with the British Delegate as regards the omission of this phrase.

The other British amendment relates to a reservation to be added to the Article. I have not quite grasped the purport of this passage, and I should be glad if General Mance would explain to us the exact significance of this addition to Article 5.

Sir Hubert LLEWELLYN SMITH (Great Britain). — What addition?

M. SERRUYS (France; speaking in French). — The question which I wish to ask is as follows : Does this addition only relate to the Conventions referred to in Article 23 of the Covenant? You say that :—

Nothing in this Convention shall affect any measures which any of the participating States are, or may be required to take, by virtue of any general international Conventions or of any such Conventions which may hereafter be concluded under the auspices of the League of Nations, with respect to the export or transit of opium, arms or any other class of traffic.

Such conventions or agreements are provided for under Article 23 of the Covenant; they are obligations undertaken by the Members in accordance with the terms of Article 23. If the object of this provision is as I have stated, I should like the text of the British amendment, the substance of which is extremely valuable, to be altered in such a way as to indicate clearly that our intention is to carry out these obligations by every means in our power, and that we are not merely bound by the terms of a convention. In short, I should like the wording to indicate clearly that the conventions

referred to include, not merely those which are now to be concluded, but any which may subsequently be concluded in order to carry out the intentions of Article 23 (e) of the Covenant. In fact, what we have to do is simply to confirm in this Convention an obligation already undertaken. In view of this fact, I am fully prepared to accept the first two portions of the British amendment.

There is a third British amendment,—the proposal to add moral grounds to grounds of public health or security; I should prefer the word *hygiène* to the word *santé* in the French text. I am convinced that we are all anxious to prevent the transit of any articles calculated to encourage immorality, but the word here suggested is *morals*—in the plural—and it seems to me that the idea implied is somewhat vague. Could we not find a more definite term? Provided this be done, and subject to any necessary amendment in the wording, I am prepared to accept the British amendment.

M. AVRAMOVITCH (Serb-Croat-Slovene; State speaking in French). — I should like to know the meaning of the amendment to Article 5, which reads as follows : *... and that persons in transit are in a position to complete their journey.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — With your permission I will, in the first place, reply to the questions put by the Serbian Delegate. Under the Convention, a State is compelled to give free transit to passengers. Passengers arrive, let us say in the United Kingdom, with the intention of proceeding to America. Their intentions are perfectly *bona fide*, and therefore they are passengers *bona fide* in transit; but they arrive without the money for a through ticket to America and are clearly unable to continue their journey. We consider that any country is entitled to refuse to treat such persons as passengers in transit. Let me give another example. The United States of America, as the destination of the persons in question, may have an immigration law requiring that every immigrant who arrives should have a certain sum of money on his person. These people are not in possession of the requisite sum, and it is therefore evident that, if they are sent across in transit to America, they will be returned to the United Kingdom. Our amendment is intended to meet such cases.

I should like to thank M. Serruys for the support he has given to the British amendments, and I may say that we are entirely in favour of the French amendments to Article 5, as he has explained them. We should also prefer the last paragraph of Article 5 in the French text to be discussed, as M. Serruys has proposed, when we come to the Convention on Waterways, rather than now, and to be inserted if necessary in the Minutes. For the same reason I am of opinion that, in order to avoid overloading the text, the words *in conformity with the intentions of Article 23 (e) of the Covenant* should be omitted,—not that there is anything in that to which the British Delegation objects, but simply in order to lighten the text.

M. Serruys has asked for an explanation of the purport of certain of the British amendments. He has asked what exactly is implied by the addition of the word *morals*. The word *morals* in English law has a fairly definite meaning. I am not sufficiently conversant with French to know the exact French word by which it would be best translated. I will give you an example. There are certain alcoholic spirits, the supply of which to native races should, by common consent, be limited. Conventions dealing with the matter are already in existence. The British Delegation is not satisfied that the question of what are known as “trade spirits” would be adequately safeguarded by the word *health*.

With regard to the addition to this article which we proposed in order to cover international Conventions on the export or transit of opium, arms or any other class of traffic, M. Serruys has asked me whether this clause is intended to refer only to matters dealt with under Article 23 of the Covenant. Opium and arms certainly come under this head, but M. Serruys asks whether there is any other particular class of traffic which is not covered by Article 23. My reply is that only one thing occurs to me,—fish caught in contravention of the North Sea Fisheries Convention. Clearly a State should not be compelled to afford transit for such fish.

There is one more thing that I should like to add. General Mance, speaking for the British Delegation, moved an amendment for the addition of the words *or of fraud*. We did not intend to move this amendment, because we thought it was covered by

the words *loyauté commerciale* (fair competition) in the French amendment. I should like to suggest that the Drafting Committee consider whether these words are sufficiently wide to cover cases of fraudulent traffic, such as false coinage, forged notes, etc. Perhaps it would be better to use the words *déloyauté commerciale* (unfair competition). In any case this is purely a question of drafting.

M. SERRUYS (France; speaking in French). — I am perfectly willing to accept the amendment,—or rather the slight adjustment,—consisting in the insertion of *dé* before *loyauté*. The British amendment adopts the negative form : ... *or for the prevention of fraud*; I have adopted the positive method : ... *to ensure fair competition*,—that is to say, competition the fairness of which is open to doubt. In the preceding passage we do not say *on grounds of disease* but, *on grounds of health*, and again, not *on grounds of public insecurity* but *on grounds of public security*. However, except from the point of view of symmetry, I have no objection to the phrase *unfair competition*. The expression conveys clearly the meaning intended. Our object is not elegance, but clearness. I am prepared, therefore, to accept Sir Hubert Llewellyn Smith's proposal. I would also thank him for having explained the purport of the addition proposed by the British Delegation. It deals with three subjects,—opium, arms and fraudulent traffic in fish caught in contravention of territorial water rights. Now that its purport has been thus clearly defined, I am able to accept in its entirety the British amendment, which indeed raises some interesting points.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I referred to the Fisheries Convention.

M. SERRUYS (France; speaking in French). — I know the Fisheries Conventions, especially the one relating to the North Sea Fisheries, to which several States were parties and which amongst other agreements has once more been put in force by the Treaty of Versailles.

M. PIERRARD (Belgium; speaking in French). — I very much regret to have to state that the Belgian Delegation cannot accept the amendment moved by our French colleagues, and approved by the British Delegation. To my mind the limitation added to Article 5 by the insertion of the words *or of unfair competition* is calculated to deprive the nations here assembled of many of the advantages which they expect to derive from the Committee on Transit, as we understand it. Is there any international criterion for fair competition? Some countries have concluded conventions amongst themselves, but there are others which have not acceded to them. Is the country of transit to be free to decide whether goods passing through its territory bear the taint of unfair competition? It seems to me that this amounts to making the country of transit entirely master of the situation; it would be free, on one pretext or another, to nullify the advantages which we expect to derive from the Convention on Transit. Suppose for instance, that a State A affords protection to certain branches of its industry which are in competition with those of a State B, a country of transit. State B, on the pretext of unfair competition, might prevent the goods of State A from reaching a State C situated on the other side of it. In my opinion, such an act would be inadmissible.

With regard to the question of morals introduced in the British amendment, I much regret that I am also unable to accept that. I will give you an example. Some time ago we had in Belgium a somewhat prudish Minister who forbade the circulation of certain French publications in Belgium, and since he was Minister for Railways, he stopped them at the frontier. As a matter of fact, France protested against this. But supposing that the Netherlands Minister of Railways were less particular than the Belgian Minister, and had no objection to the entry of these publications into Holland, what right would our Minister have to prevent them from passing through Belgian territory? This example will show you clearly the dangers attending the introduction of such ideas into a convention dealing with freedom of transit. My conception of transit is as follows: State A prepares goods for despatch to State C. They are placed in a case or closed box of some kind. To my mind, State B, through which

the goods pass, is not entitled, according to the terms of this Convention, even to know what is contained in the box passing through its territory, unless there are objections such as those mentioned in this very Article 5, which, in my opinion, is sufficiently explicit.

Mention has also been made of counterfeit coinage. But this does not affect the country of transit; it is a matter for the importing country. The latter may take any measures which it considers necessary to prevent such counterfeit coin or forged notes from passing its frontier; it is not for the country of transit to take such measures.

In speaking I have been actuated by purely liberal motives. I have no ulterior motive connected with the interests of my own country. I am speaking as the advocate of freedom, and in so doing I am following the example set by my Minister, who stated, at the outset of the Conference, that in his opinion the terms of the present Convention were not liberal enough.

M. SERRUYS (France; speaking in French). — In the first place, I desire to pay tribute to the liberal ideas of my honoured opponent; I share them to the full. But in my opinion the present question is not one of liberal views but of health, and we for our part could not possibly accept a régime which, on the pretext of improving the conditions of international transit and endowing it with a greater degree of freedom, would actually encourage the abuse of such freedom. We cannot, for instance, be required to allow the passage through our territory of goods bearing a fraudulent French trade-mark, and to allow the sender to make use of the fact that the goods have passed through France in order to create the impression that they are of French origin. That would constitute an abuse, and the intention of the British Delegation, in substituting the word *unfair* for the word *fair*, was to make this fact clear. It is far from my intention to endeavour to lay down rules with regard to competition; but we will not countenance in our territory certain kinds of traffic which would involve unfair competition with our own products. The Belgian Delegate knows perfectly well to which traffic I refer. In my opinion it is out of the question that a Convention drawn up under the auspices of the League of Nations should sanction and promote practices of this kind.

M. VALLOTTON (Switzerland; speaking in French). — The present discussion is no novelty to those who had the privilege of passing a few days in the Boulevard Saint-Germain some months ago. The question was brought up for discussion at that time. If our French colleague had been present at the early discussions he would be aware that his proposal is the result of a misunderstanding, as also is that of the British Delegation; it was indeed, unless I am mistaken, rejected at the time. We unanimously agreed to exclude from the right of free transit certain classes of goods, the importation of which is prohibited on grounds of *public health or security*. Whether these words are well-chosen is a matter for discussion. At all events, the intention is quite clear; it is to respect the police regulations of countries of transit, and also any international Conventions concluded by them,—in particular international laws and conventions relating to fair competition, especially the Madrid Agreement with regard to false marks of origin.

On behalf of the Swiss Delegation, I entirely endorse the remarks made by the Belgian Delegate. Switzerland, like Belgium and other countries, even including those from whom we differ at the moment, does its utmost to safeguard fair competition, especially with regard to marks of origin. I myself have for 25 years ceaselessly striven to protect trade-marks and to prevent the use of false marks of origin. We are all, therefore, agreed as to the substance of the matter. The question is merely one of method. Assuming we are all agreed that obvious fraud and breaches of international engagements must be absolutely prevented, are we to allow, not a judge, but a customs official,—as a rule a man without education,—to stop goods in transit and to delay, more or less intentionally, the transit of goods of a neighbouring country? For what purpose? To prevent our neighbours from sending goods in transit to a third State? That is the point.

The question must be probed further. The point at issue is not the significance of the two words *public health* and *security*; the real question is to decide whether this

Committee intends to raise its voice in protest against the present tendency to multiply at every frontier the customs formalities and red tape which constitute such an obstacle to transit traffic.

We have assembled here with an excellent programme and the loftiest of sentiments, which Switzerland and Belgium share to the full. Do we intend to carry out this programme faithfully, not only in word, but in deed? Our first act should take the form of a protest against the customs abuses which, on the pretext of safeguarding fair competition, prevent Switzerland, for example, from sending goods in transit to another country, or Spain from exporting her home produce. I have no particular country in mind,—I simply take these examples at random. Are we to provide the customs authorities with powers in excess of those required for the task which they are normally called upon to fulfil,—that of collecting duties legally due to a State which allows goods to enter its territory for disposal there? We cannot accept the principle that the customs authorities in countries of transit should, on various pretexts, be allowed to do what the French Delegation itself is not prepared to accept in the case of navigable waterways, for it recognises that vessels under seal must be left intact.

I am not a railway expert, but I think I may state that for the most part transit traffic on railways is carried on under the same conditions as in the case of vessels. Why should wagons be opened when the country of transit, as the guardian of public order, can always seal them on entry into its territory, in order to prevent any consequences detrimental to commercial freedom or public morals within its territory? I wished to put the matter in this light because, in my opinion, this is the point of view from which it should be regarded.

The CHAIRMAN (speaking in French). — In order to avoid an unduly long discussion upon this point, I suggest that a Sub-Committee composed of MM. Serruys, Vallotton, Pierrard, Sir Hubert Llewellyn Smith, MM. Lankas and Fernandez y Medina should be entrusted with the further examination of the question.

M. VALLOTTON (Switzerland; speaking in French). — Before this Sub-Committee meets, it would be well for us to consider the Italian amendment on monopolies; I have a few points to submit in regard to foodstuffs which are subject to monopolies.

The CHAIRMAN (speaking in French). — We will continue the discussion. I call upon the Italian Delegate to submit the Italian amendment.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation proposes to add in Article 5, after the word *plants*, the words *or owing to the existence of State monopolies*.

It sometimes happens that States prohibit the importation of certain goods which are subject to monopolies, in order to safeguard these. The proposed amendment lays down that States will be entitled to prohibit the transit of such goods. The Italian amendment is necessary in the interest of States holding monopolies which they have to protect against possible infringement on the part of the consignors of certain classes of goods connected with these monopolies.

M. KROLLER (Netherlands; speaking in French). — The Netherlands Delegation considers that all reservations with regard to existing or subsequent Conventions should be taken in conjunction with Article 10 and considered by the same sub-committee. As regards the reservations made by the Italian Delegation, the Netherlands Delegation is unable to accept them. Let us take a few practical examples. In several States tobacco is subject to a monopoly. If we accepted this reservation, the transit of tobacco through a State holding a monopoly would be impossible, and Dutch tobacco would be unable to pass through Germany on its way to other countries. This would be an impossible position. We cannot accept the principle that the mere existence of a monopoly justifies the prohibition of transit.

M. SCASSI (Greece; speaking in French). — I think that the amendment with regard to monopolies would interfere very seriously with international trade, and that

its adoption would be a distinctly retrograde measure. The trade of a great many countries would be adversely affected by the introduction of this measure. For instance, in Greece, matches are a monopoly; would Greece not have the right to import English matches via Italy? Greece grows tobacco, and carries on a large trade in it. Would she no longer be able to send her tobacco to Switzerland or Holland in transit through the intermediate countries? I could quote many other examples. On these grounds the Greek Delegation asks for the rejection of the amendment.

THE CHAIRMAN (speaking in French). — I will ask the Italian Delegate to explain his amendment.

M. BIGNAMI (Italy; speaking in French). — On behalf of the Italian Delegation I would point out that the right to prohibit the import and transit of goods subject to monopoly is reserved in many international treaties. What we desire is that States where certain goods are subject to monopoly shall have the right to take special measures to prevent abuse of the system. Account must also be taken of goods which may have a detrimental effect on morals, and the entry of which should be prohibited, as provided in the British amendment. The fact that we wish to prevent abuses does not imply that we wish to prevent transit traffic. So far as I am aware, Italy has never prohibited the transit of goods subject to monopoly. At all events, a question of this kind should be dealt with by the sub-committee which will consider the French and British proposals, and whose object should be to prevent abuses in either direction.

M. LANKAS (Czecho-Slovakia; speaking in French). — The Sub-Committee appointed to consider the Italian amendment should be guided, in my opinion, by the principle that at all costs the taking of any retrograde step must be avoided. I very much fear, however, that to include in our Convention a provision intended to protect monopolies which exist in certain States would be to reverse the engine. Moreover, the embodiment of this principle in a clause of general application would lend itself to abuses and would constitute an obstacle to freedom of transit. A State which has a monopoly and wishes to ensure that goods in transit do not remain in its territory, is protected by the following clause : *Each Contracting State shall have the right to take the measures necessary to ensure that goods which are the subject of a monopoly do not remain within its territory.*

The British proposal which was read to us : *Nothing in this Convention shall affect...*, also seems to me dangerous. I should like to know whether the Conventions referred to include both general and bilateral Conventions. To my mind it is out of the question that freedom of transit should be blocked by bilateral Conventions, even if concluded under the auspices of the League of Nations.

Lastly, the Czecho-Slovak Delegation strongly urges that the amendment submitted by the French Delegation : *This provision shall not apply whenever transit is carried out by vessels...* should be inserted either in the Convention on Freedom of Transit or in the Convention on Navigable Waterways, for in our opinion this is an extremely practical suggestion. When a portion of a vessel is sealed, it is unnecessary to examine it in order to ensure that the goods are really in transit.

The CHAIRMAN (speaking in French). — If no-one else wishes to speak, I propose to submit Article 5 and all the amendments to it to a sub-committee.

M. BOCHKOFF (Bulgaria; speaking in French). — Bulgaria is a country which produces and exports a large quantity of tobacco. I therefore share the views of the Netherlands and Greek Delegations, and oppose to the Italian amendment. I move that this question, which is one of principle and not merely one of drafting, should be discussed in plenary committee.

M. SCASSI (Greece; speaking in French). — It is not a mere question of drafting, and the discussion should be continued here.

The CHAIRMAN (speaking in French). — The Officers of the Conference maintain their proposal to submit the matter to a Sub-Committee, composed as follows:—

MM. Serruys (France);
Vallotton (Switzerland);
Pierrard (Belgium);
Sir Hubert Llewellyn Smith (Great Britain);
MM. Kasama (Japan);
Kröller (Netherlands);
Fernandez y Medina (Uruguay);
Scassi (Greece);
Lankas (Czecho-Slovakia);
Bignami (Italy);
Carneiro (Brazil).

Is there any objection?

M. TSANG-OU (China; speaking in French). — I do not wish to be a member of the Sub-Committee, but I should like to ask the Brazilian Delegate to lay before it a short statement of the views of the Chinese Delegation on Article 5, and I would ask the Sub-Committee to take these views into account as far as possible.

The CHAIRMAN (speaking in French). — The Sub-Committee will be only too pleased to receive the statement.

It was decided to refer the question to the Sub-Committee.

DISCUSSION OF ARTICLE 6

The CHAIRMAN (speaking in French). — We now come to Article 6. The French Delegation proposes the deletion of the words : *Notwithstanding the provisions of Article 2 et seq., and mails and postal parcels.*

M. SERRUYS (France; speaking in French). — The matter is merely one of drafting. The word *notwithstanding* pre-supposes a contradiction between these clauses, whereas the intention is merely to limit the application of the provisions referred to. The best course would be to adopt the article in principle, and then to refer it to the Drafting Committee, to be worded in such a way as to convey the meaning intended.

The CHAIRMAN (speaking in French). — The words *mails and postal parcels* will be deleted in conformity with the decision taken on the other articles.

The British Delegation has moved an amendment for the deletion of the word *concerned* (intéressées) and the insertion of the words *on the ground of its own interest in the traffic.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — Although this is rather more than a drafting amendment, it is not a question to which the British Delegation attaches great importance as a matter of principle, nor is it one on which it would insist in the face of any serious opposition; but it has been represented to us that the words *a valid reason* are somewhat vague, and that it might be better to define the scope of this exception by restricting the right of intervention to those High Contracting Parties who have a direct interest in the transit traffic in question.

M. SERRUYS (France; speaking in French). — The French Delegation frankly admits the importance of the point raised by the British Delegation. We have to decide whether a State may benefit by facilities granted to another State, on the ground that it is interested in the traffic in question. What kinds of interest are meant? I should like the matter to be more clearly defined. Let us take the instance of a

State which is not a Member of the League of Nations; would that State be entitled to say that it was interested in the transport traffic of a Member State and that the terms of the Convention should consequently apply to it? If this were so, there would, in my opinion, be no distinction between Member and Non-Member States. Further, in what does such participation consist? Is financial participation meant, and are we going to broach the vast question of the nationality of companies? For instance, would a State be in a position to say that it or one of its nationals controlled a shipping company belonging to another State which had signed the Convention? Would this ground be sufficient to entitle it to receive all the advantages conferred by adherence to the Convention? Moreover, what is to constitute control? Control would sometimes be of a financial, sometimes of an administrative nature, and sometimes simply a question of the ownership of shares. These points must be definitely settled. Of course we must not impose too many restrictions; nevertheless, we must allow no possibility of misunderstanding. I very much fear, however, that the word *interest* is liable to misinterpretation, and that it would be a source of many misunderstandings which would seriously impede the application of the Convention. If we desire to extend the scope of such intervention, we must differentiate between signatory and non-signatory States. If we say that "a signatory State, by taking shares in, or, in a word assuming control of a company belonging to a non-signatory State, can confer upon that State the advantages derived from the Convention", confusion will inevitably result.

As you will realise, such a course would involve a considerable element of danger,—though I am not sure if I have expressed myself clearly. If my remarks are not quite clear, it is because the proposal laid before us is itself not very clearly defined, and I should be glad of a further explanation on some points.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation does not attach much importance to this amendment; if it raises any difficulty we are willing to withdraw it.

M. SERRUYS (France; speaking in French). — I am very grateful to Sir Hubert Llewellyn Smith. His action will remove a slight misunderstanding.

The CHAIRMAN (speaking in French). — The British amendment is withdrawn. The Roumanian Delegation has handed in an amendment to insert after the word *concerned* the words *provided the non-contracting State be prepared to accord reciprocity*.

M. PERIETZEANO (Roumania; speaking in French). — In my opinion, a non-contracting State which participates in the advantages of transit traffic must be required to accord reciprocal conditions.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I should like to have a fuller explanation of what reciprocity means here,—whether it means reciprocity on any particular transit route. If it indicates special reciprocity, I am satisfied; but if general reciprocity,—that is to say the granting to a non-contracting State of all the advantages conferred by the Convention,—I think that would be going too far, and we should not be prepared to agree to such a proposal.

M. PERIETZEANO (Roumania; speaking in French). — It is for the Committee to decide how far we are to go. In my opinion there should be complete reciprocity.

M. KROLLER (Netherlands; speaking in French). — I do not think it advisable to introduce the question of reciprocity at this point; moreover, it was discussed at great length in Paris. It was there decided that two contracting States might establish a transit route for goods traffic through the territory of a non-contracting State. The interests of the latter would not be involved. The traffic would be conducted solely in the interests of the two contracting States; and the non-contracting State would not come into the question. I hope my explanation is clear.

M. PIERRARD (Belgium; speaking in French). — The Belgian Delegation is in entire agreement with the views expressed by the Netherlands Delegate.

The CHAIRMAN (speaking in French). — Does the Roumanian Delegate press his amendment?

M. PERIETZEANO (Roumania; speaking in French). — I will not press the point further, but I desire that it should be put to the vote.

The CHAIRMAN (speaking in French). — I will now take a vote upon the Roumanian amendment.

The Roumanian amendment was rejected.

Does anyone else wish to speak?

I will now put to the vote Article 6 in the form in which it appears in the *Green Book*.

Article 6 was adopted.

M. SERRUYS (France; speaking in French). — The French amendment proposing the deletion of two or three words at the beginning of the article should surely be reserved. It is understood that the Drafting Committee will bear our proposal in mind in drafting the final text of Article 6.

The CHAIRMAN (speaking in French). — That is understood.

M. BOCHKOFF (Bulgaria; speaking in French). — I should like to ask the Chairman why my proposal with regard to the discussion of the Italian amendment to Article 5 has not been taken into consideration. A similar case has already arisen in connection with a proposal by the Serb-Croat-Slovene Delegation to delete the word *vessels etc.*, in one of the articles. This question was not referred to a sub-committee,—it was discussed and voted upon at a plenary meeting of the Committee.

The CHAIRMAN (speaking in French). — The question raised by the Bulgarian Delegate will be discussed in plenary session when the Sub-Committee has submitted its report.

The meeting adjourned at 1 p.m.

SIXTH MEETING OF THE PLENARY COMMITTEE

(Friday, March 18th, 1921, at 4.30 p. m.)

DISCUSSION OF ARTICLE 7 — POSTPONEMENT OF DISCUSSION OF ARTICLES 8 AND 9 — DISCUSSION OF PREAMBLE AND ARTICLE 10 — REFERENCE TO SUB-COMMITTEE OF ARTICLES 10, 11 AND 12.

The meeting opened with M. Loudon, Vice-President of the Conference in the Chair.

DISCUSSION OF ARTICLE 7

THE CHAIRMAN (speaking in French). — We will now continue the discussion upon the Draft Convention on Transit.

We have come to Article 7, which reads as follows :—

ARTICLE 7. — *Scope of Application of the Convention.* — The present Convention shall not be taken as affecting in any way measures for national security which each of the High Contracting Parties reserves to itself the right of taking on its own territory in case of national emergency; it being nevertheless understood that the principle of Freedom of Transit shall be maintained as far as possible.

An amendment has been handed in by the French Delegation proposing that Article 7 should be drafted as follows :—

Exceptions may be made, in special cases, to the terms of the preceding article in virtue of measures of a special or general nature which any of the High Contracting Parties might be compelled to take for the safety of the State or the vital interests of the country, it being understood that the principle of Freedom of Transit shall, as far as possible, be observed.

I call upon M. Serruys to explain the purport of the French amendment.

M. SERRUYS (France; speaking in French). — I should like briefly to indicate the motives which actuated the French Delegation in submitting this amendment. We felt some astonishment at the form in which Article 7 was drawn up. I think that the somewhat indefinite manner in which this article was expressed is due to the fact that the French text was a translation from the English. We are unable to explain the exact significance of the words : *the present Convention shall not be taken as affecting in any way measures for national security...* Does the statement that a Convention is not to be regarded as affecting a certain part of the initiative or activities of a State imply that the Convention does not apply, or is suspended? It appears to us very difficult to draw any conclusions whatever from this text. The English expresses the meaning intended, but the French translation does not. We have therefore attempted to prepare a clearly-worded article conveying the exact intentions of the *Green Book* in a more precise form. In our opinion it should be understood that the Convention remains in force throughout the exceptional circumstances referred to, and that any deviations from the provisions of the Convention which may be justified in the event of an emergency must be treated as exceptions to the general rule. Moreover, we considered that the true nature of these exceptional emergencies should be correctly described, namely, emergencies affecting the vital interests of a State. I should like to point out that, as a matter of fact, the Commentary of the

Green Book is clearer than the actual text in this respect. In the text only national security and the safety of the State are mentioned, that is to say, circumstances endangering an existing administration, whereas the Commentary also contemplates (1) a breakdown in communications or famine, which cannot properly speaking be brought under the same heading as the safety of the State.

We have therefore ventured to submit to you a text which lays down that in such circumstances, no matter how exceptional they may be, the Convention remains in force, and that any special measures constitute deviations from the terms of the Convention. With regard to guarantees for the observance of the Convention, our text provides that a departure from the terms of the Convention may only be made in the event of emergencies affecting the safety of the State or the vital interests of the country; and also that the principle of freedom of transit must be observed to the utmost possible extent. Such is the exact purport of the version submitted by us, and in my opinion it does not affect the substance of the article.

M. VALLOTTON (Switzerland; speaking in French). — Without committing myself with regard to the principle embodied in the French amendment, I consider that at all events the word *maintained* should be replaced by the word *observed*.

M. SERRUYS (France; speaking in French). — I agree.

The CHAIRMAN (speaking in French). — There is also an Italian amendment referring to the same article, proposing the addition of the words :
either for purposes of national defence or after the words on its own territory.

M. BIGNAMI (Italy; speaking in French). — Article 7 in its present form only contemplates the taking of measures for national safety in the event of national emergency. Provision must also be made for cases in which a State finds it necessary to take certain steps, for instance, in connection with the construction of works for national defence, or to stop transit traffic for purposes of national defence. There are some States—Italy for instance—which have attained freedom and independence after a century-long struggle; such States cannot afford to compromise their safety by accepting the principle that a State may only take measures for national security in certain circumstances. It is for this reason that the Italian Delegation has submitted the above amendment.

M. PIERRARD (Belgium; speaking in French). — I am impelled to speak by the same motive which led me to the platform this morning. I should feel certain misgivings if the words *affecting the vital interests of the country* were inserted in Article 7. After the explanation given by M. Serruys, which will appear in the Minutes, I think that we can come to an understanding; but who is to decide what are the vital interests of a country? The country itself?

M. SERRUYS (France; speaking in French). — Obviously.

M. PIERRARD (Belgium; speaking in French). — In that case vital interests may include commercial or economic interests.

M. SERRUYS (France; speaking in French). — No.

M. PIERRARD (Belgium; speaking in French). — I am afraid that in practice this may happen. If definite guarantees were provided as to the spirit in which this provision would be applied, we might be able to accept it; in my opinion, however, reservations of this kind amount to restrictions upon freedom of transit.

M. SERRUYS (France; speaking in French). — I am very glad that the difficulty has been thus clearly stated by the Belgian Delegate. This article is one of the most

(1) See p. 291.

important in the Convention. I may as well say frankly that were the tone of the discussion to indicate that some of the delegations were endeavouring to restrict the freedom of action—I will not go so far as to say sovereignty—of certain States, the difficulty would assume very serious dimensions.

M. Pierrard has put a question which astonishes me;—Who is to decide what are the vital interests of a State? To my mind there can be only one judge—the State itself. Moreover, is there not definite assurance that any decisions which it might take with regard to its own interests in connection with transit will be subject to a certain degree of control? Do you not realise that this Convention contains certain new features? The six articles which you have adopted constitute a transit statute which lays down complete equality, and involves the general and unanimous consent of the Signatory Powers to the establishment of principles which may at times be irksome to them, and which in any case entail limitation of their contractual freedom. At the end of this Convention, provision is made for the acceptance by these Powers of a procedure of conciliation, and also for recognition in advance of the principle that when disputes arise they are to be dealt with, not according to the methods formerly employed, but according to the new method,—of which I am an enthusiastic supporter—by which a dispute is brought before the tribunal of international opinion and, if necessary,—should it become aggravated—is submitted to the Court of International Justice. Do you not think that after we have undertaken these two obligations, firstly, to comply with a principle of universal application and, secondly, to accept international jurisdiction, we are entitled to expect confidence to be reposed in us and also to have a free hand in safeguarding what I have termed the vital interests of States.

What do we mean by vital interests? This is the second question put by the Belgian Delegate. Vital interests include the safety of the State and national defence; they may be of a political or of an economic nature, or they may be both political and economic at the same time. We cannot foresee all possible contingencies. You have mentioned famine and transport crisis; there may be other circumstances which are dependent not merely on yourself but also on your neighbours. Are we to restrict these interests to such narrow limits, regardless of the evidence of history? I, for my part, am not at all inclined to agree to a renunciation of this kind.

M. Pierrard asks me to provide guarantees. These guarantees are contained in the first articles of the Convention, and in the jurisdiction which you have set up. We tell you in all good faith that we wish to make an exception with regard to vital interests, and that we wish the decision to rest with us as to the necessity for taking measures for their protection. You will still, however, be able to resort to the various jurisdictions provided for in the Convention. Will not that content you? Must we enumerate here all the various circumstances in which a State may decide that its vital interests are involved? That would be a problem of such difficulty that I for my part would not venture to deal with it.

Sir Hubert LLEWELLYN SMITH (Great Britain). — In Article 7 we approach a question in which there is necessarily a certain conflict between our common desire, on the one hand, to maintain the freedom of transit in all possible circumstances, and, on the other hand, not to infringe upon national sovereignty and the right of each country in the last resort to declare what are its vital interests and to take the measures necessary to safeguard them.

Before dealing with M. Serruy's amendment, may I suggest to the Italian Delegate that his amendment, with which the British Delegation is entirely in accord, would be covered by the more general amendment of M. Serruys, and therefore perhaps we could carry on our discussion entirely on the basis of the French amendment. I see in this amendment only one danger, and that is the possibility that a State might presume upon its terms in order to claim that certain measures taken for economic or commercial purposes, quite distinct from the protection of vital interests, were taken under the powers conferred by this article. Such a State might say: "We are sole judges of what are our vital interests, and therefore there can be no operation of the jurisdiction established by this Convention." I am sure that M. Serruys never intended to create such a possibility. In his last speech he clearly explained that our

safeguard consists in the jurisdiction set up by this Convention. I think on reading his amendment that he is right, for I observe that, at the end, it is stated that the principle of freedom of transit must be maintained or—to follow the wording of M. Vallotton—observed. That is a question of fact, and I conclude that recourse should be had to the jurisdiction, not on the question as to whether an interest declared to be vital is vital or not, but whether the action taken is *bona fide* in defence of national interests. If M. Serruys would allow me, I should like to make this even more clear by means of a very slight alteration in the wording. If, instead of the words *may consider it necessary* the Committee would agree to the insertion of the words *is obliged*, I think the sense would be made even clearer. This, in my opinion, is all that is required in order to restrict the exceptions to the narrowest possible limits, and that is, I think, the desire of us all.

M. SERRUYS (France; speaking in French). — I should like to say that the alteration suggested by the British Delegate meets my views exactly, and I am therefore perfectly ready to accept it.

M. LANKAS (Czecho-Slovakia; speaking in French). — The amendment proposed by the French Delegation is worthy of careful study, more especially from the point of view of landlocked countries. As the representative of one of these, I am bold enough to say that I am somewhat afraid of this French amendment. Such experience as I have of high politics and diplomacy has convinced me that interests may very easily and very speedily become vital interests, and I am uneasy regarding the scope of these words *vital interests*. We considered this question in the Commission of Enquiry, and we all came to the conclusion that what was given with one hand should not be withdrawn with the other. We were afraid of a tendency to impose too many restrictions. Perhaps in practice undue advantage will not be taken; nevertheless, we are afraid that more may be read into these words than is intended, since they are not sufficiently definite, and that they will too often be pleaded as authoritative. For this reason the Commission of Enquiry decided to lay down something more concrete, and to indicate that to speak of vital interests being involved implied a serious emergency. I must therefore devote mature consideration to the matter before coming to a decision.

M. VAN EYSINGA (Netherlands; speaking in French). — Articles 5 and 7 are very closely connected. Article 7 relates to the imposition of restrictions upon freedom of transit at exceptional times and in case of emergency, whereas Article 5 lays down restrictions for normal times. I think that the idea contained in the Italian amendment should be taken in conjunction with Article 5, since it deals with special rules for normal times. Moreover, I am inclined to think that the French amendment also relates rather to Article 5 than to Article 7, at any rate to some degree, and it is this very point that makes me somewhat uneasy concerning this amendment. We are all of opinion that the subsidiary amendment proposed by the chief British Delegate and accepted by the French Delegate, constitutes a very considerable improvement. My objections, however, are not entirely removed; Article 7 refers to emergencies. This expression does not appear in the French amendment, and on the other and, the latter contains the expression *vital interests*, which may cause certain restrictions to be imposed on transit. Our Delegation shares the views of those delegations which are of opinion that this expression *vital interests* is somewhat vague. I think we might find something more definite. If we cannot do this in the course of a meeting, we might perhaps instruct a sub-committee to find a somewhat less comprehensive expression. In short, the Netherlands Delegation shares the views of the Belgian and Czecho-Slovak Delegations.

M. SERRUYS (France; speaking in French). — I am very glad that the debate has taken this turn, for it gives me an opportunity to define exactly both the purpose and subject of the clause under discussion. The Netherlands Delegate has stated that there is a very close connection between Article 5 and Article 7. That is obvious. Both provide for exceptions to a general rule. He has also very rightly said that

the exceptions provided for in Article 5 were constant and permanent exceptions, whereas Article 7 relates to extraordinary exceptions justified by an exceptional situation, or exceptional events.

M. Lankas, the Commentator of the Green Pospel, has brought to bear his usual somewhat pointed arguments, and I should like to refer to one of his remarks which seems to me of some interest. M. Lankas states that the text is sound. I venture to disagree, and in doing so I entirely share the views of M. Chargueraud, who, like M. Lankas, was one of the authors of the *Green Book*. It is consequently useless to quote the authors of the *Green Book*, some of whom actually took part in the Conference, while others were mere spectators. Now the spectators allow the others to come forward and direct operations. This is the second time that I have made a statement to this effect, and I absolutely insist that it be included in the Minutes. Apart from this point, however, I am of opinion that the statements of M. Lankas and of the Netherlands Delegate have thrown some light on the matter, and I entirely agree that their wishes should be met. I am prepared to concede this point just as readily as I agreed to the insertion of an additional exception at the request of Sir Hubert Llewellyn Smith just now. The French Delegation is actuated by no ulterior motives, and I therefore venture to submit to you a text which is intended on the one hand to maintain all absolutely essential guarantees, and on the other hand to eliminate all possible grounds for apprehension and dispute. This text is as follows :—

Exceptions may be made, in special cases, to the terms of the preceding articles in virtue of measures of a special or general nature which any of the High Contracting Parties might be obliged to take in case of an emergency affecting the vital interests of the country, it being understood that the principle of Freedom of Transit shall, as far as possible, be observed.

This paragraph refers only to an entirely exceptional situation and makes provision only for deviation from a general rule in exceptional circumstances, whilst at the same time affording the necessary degree of protection to the sovereign rights of States.

M. PIERRARD (Belgium; speaking in French). — Like M. Serruys, I am very glad that the discussion has enabled us to clear up this point, though this has not been done without a certain element of heat. I should like to define my views a little more clearly, and to assure the French Delegation that it will be met by complete frankness on the part of the Belgium Delegation. However, with my natural impetuosity, which is not the attribute of a diplomat, but rather of a certain legendary animal of my own country—I come from the Ardennes—I am obliged to give vent to whatever my fierce love of liberty impels me to say.

When the British Delegate suggested his first amendment, I regarded it as the first step towards the standpoint of the French Delegation, and the French Delegation immediately responded to this step. I was about to ask him to make a further concession when M. Van Eysinga joined in the discussion and expressed my own views still more clearly. Finally, M. Serruys himself proposed an amendment which I was on the point of suggesting. Our views, therefore, are identical, and I thank M. Serruys for having made this proposal.

M. LANKAS (Czecho-Slovakia; speaking in French). — I entirely agree with the Belgian Delegate, and I accept the wording of M. Serruys. I should like, however, to point out that I was not addressing myself to him when I quoted the *Green Book*, and I undertake not to do so again.

The CHAIRMAN (speaking in French). — Does the Italian Delegate wish his amendment to be inserted in Article 5, or does he wish it to remain in Article 7?

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation accepts the amendment of the French Delegation, and withdraws its own amendment on condition that it is inserted in the Minutes and the General Report.

The CHAIRMAN (speaking in French). — I will take the vote upon Article 7 as amended. It now reads as follows : —

Exceptions may be made, in special cases, to the terms of the preceding articles in virtue of measures of a special or general nature which any of the High Contracting Parties might be obliged in to take case of emergency affecting the vital interests of the country, it being understood that the principle of freedom of transit shall, as far as possible, be observed.

Article 7 was adopted, 29 voting for :

M. BIGNAMI (Italy; speaking in French). — Is it clearly understood that vital interests include matters of national defence even in time of peace?

The CHAIRMAN (speaking in French). — Certainly.

M. SERRUYS (France; speaking in French). — Of course.

POSTPONEMENT OF DISCUSSION OF ARTICLES 8 AND 9

M. VALLOTTON (Switzerland; speaking in French). — Of course this interpretation does not decide the fate of Articles 8 and 9, to which we have handed in an amendment which has not yet been considered.

The CHAIRMAN (speaking in French). — I have been asked not to proceed with the discussion of Article 8 now; perhaps we could postpone it until to-morrow and deal with Article 9 now.

M. VALLOTTON (Switzerland; speaking in French). — These two articles are closely inter connected; we cannot deal with the problems of war without having regard to the mutual obligations incumbent upon States Members of the League of Nations. I therefore propose that the discussion of Article 9 be also postponed.

The CHAIRMAN (speaking in French). — The Swiss Delegate proposes that Articles 8 and 9 be postponed until some future meeting. Has anyone any objection?

The motion was carried.

DISCUSSION OF PREAMBLE AND ARTICLE 10

The CHAIRMAN (speaking in French). — We now come to Article 10. As you are aware, Article 10 and the Preamble were to be dealt with together. Seeing, however, that some of the amendments to Article 10 have not yet been considered, I think it would be better to postpone the discussion of Article 10 until later. The opinion of the Officers of the Conference is that it would be better to discuss it at the end of the Convention.

M. SERRUYS (France; speaking in French). -- Mr. Chairman, I quite understand your motives for postponing the discussion upon Article 10 until we are all thoroughly well acquainted with the subject. You may perhaps remember that a few days ago, when we were discussing the question of the Preamble, and an amendment was submitted by the Italian Delegation, I was the first to point out (1) that this article required very thorough consideration, because, in my opinion, the whole Convention is in certain respects dependent upon it. I venture to ask you whether you would be prepared to agree to a procedure differing very slightly from that which you have indicated. I suggest that we should forthwith hold a general discussion, in order to be able to form an idea as to the views, intentions and apprehensions of the Committee.

(1) See p. 54.

I am under the impression that amendments have not hitherto been submitted, for the very reason that we agreed the other day to reserve the question until the general discussion. You will remember that I stated that in dealing with these subjects I felt we could not begin by forming a sub-committee. Directly the discussion is begun amendments will pour in. It will then be the duty of a sub-committee to sort them out, to observe their characteristics and to analyse them, in order that the final discussion may be founded on a well-prepared basis. If you see your way to adopting this procedure, I think that it will lead to greater clearness in the debate.

Sir Hubert LLEWELLYN SMITH (Great Britain). — We agree.

The CHAIRMAN (speaking in French). — The Officers of the Conference take the same view.

We will now begin the general discussion upon Article 10 of the Draft Convention and also the Preamble.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation has already briefly stated the reasons which led it to move its amendment to the Preamble which entails the omission of Article 10. In view, however, of the importance of the question, I intend to repeat in somewhat greater detail the reasons which led us to submit our amendment for the consideration of the Committee in the best interests of the great work which we have in hand. Our amendment entails the omission of Article 10, and the addition in the Preamble, after the word *prejudice*, of the words : *to international conventions already existing or which may subsequently be concluded, and which, in the opinion of the Council of the League of Nations, are not contrary to the spirit of the present Convention.*

Our proposal takes into account both the past and the future.

(1) *The past* : Article 23 of the Covenant begins as follows : *Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon.* In our work here, therefore, we must follow the lines indicated by the Covenant itself in regard to conventions concluded between States in the past. Since, under Article 10 of the Draft Convention, States are accorded the right to maintain in force even such treaties as are not in complete conformity with the principles of the Convention itself, it is perfectly clear that the authors of the draft scheme fully realised the difficulty which would be experienced by States in ratifying the Convention if the past were not to some extent taken into account. Moreover, since Article 10 recognises the possibility of exceptions to the Convention in consequence of existing treaties, why should we not recognise that all existing treaties remain in force? This would be both simpler and clearer and—what is more important—would eliminate a serious impediment to the ratification of the Convention. There are certainly in existence thousands of conventions between States. Very often these conventions are extremely complicated, and the mutual transport facilities accorded constitute only a secondary consideration, and are closely bound up with other parts of the same treaty. Why should we abolish these facilities, which are the immediate result of special historical circumstances, the merits of which we cannot assess with any precision? Can we be sure that all the nations represented here have, in accordance with Article 10, been careful to declare all the treaties which they intend to maintain in force? Supposing a Power to have forgotten some, we shall run a risk of foregoing the accession of that Power to the Convention? Moreover, supposing that a State Member of the League of Nations has concluded a treaty with another State which is not a Member, what will be the position of the former supposing it to have forgotten to declare the treaty? Which will it be called upon to fulfil, the obligations already undertaken or the new ones? In order to avoid all these difficulties, the solution to which is so extremely difficult, the Italian Delegation proposes that, above all, the principle of respect for the past should be established.

(2) *The future* : It will be noted that in the text of Article 10 of the draft scheme, possible deviations from the terms of the Convention may be authorised when a combination of special economic, topographical and technical circumstances justify exceptional agreements of this nature. Since it is not specified who is to decide whether

the reasons adduced are justifiable, we propose that the decision should be vested in the Council of the League of Nations. If we adopt this system, it would be sufficient if States Members of the League of Nations, when concluding conventions with other States, were to take care to insert clauses clearly stating that the provisions were only valid provided the League of Nations did not object to them,—and this irrespective of whether the other State signing the Convention were a Member of the League of Nations or not, or whether the Convention itself dealt specially with transport questions or with general conventions in which transport questions occurred. Should the League of Nations not approve, any provisions to which exception might be taken would be regarded by common consent as null and void. This would eliminate any difficulty in connection with special agreements between States. As may be seen, our proposal is inspired by motives of justice and practical utility.

We are very glad to have been able to initiate a discussion on this subject, and shall welcome any conciliatory proposal which we regard as equitable; but we do venture to hope that our amendment, which is straightforward and clear, will be accepted by the Committee, if not in the letter, at any rate in the spirit of our proposal.

M. ALVAREZ (Chile; speaking in French). — Article 10 brings us to one of the fundamental points of the Convention on Transit,—the effect of the Convention on existing or future treaties concluded by the signatory States.

As I have already had occasion to point out before the Committee, the new international régime must be based upon the principle of co-operation (1). We must not, however, like Article 10 of the Draft Convention before us, proceed too far or too rapidly towards this goal. In its present form this article is certain to give rise to difficulties and dangers, since it involves entirely unacceptable solutions and tends on insufficient grounds to upset the established order of things, by abrogating all existing treaties or parts of treaties dealing with transit. I will not waste time in considering whether this article is or is not contrary to the terms of Article 23 (e) of the Covenant of the League of Nations as regards respect for existing or future Conventions concluded between States. I should like to point out, however, that Article 10 is bound to arouse strenuous opposition in the Parliaments of all countries, on the grounds which I have indicated. There can be no objection to the fact that paragraph 2 of the article allows States to declare which of such Conventions on Transit they intend to maintain in force. A whole series of treaties exists variously, called “treaties of peace, friendship, commerce, navigation”, which deal with the most varied subjects, amongst others those relating directly or indirectly to commerce and transit. According to the second paragraph of Article 10, an express statement to the effect that they are to be maintained is necessary, if these stipulations are not to lapse. A declaration of this kind, however, is by no means easy to make, and even supposing that it could be done, we should be faced with a list of treaties or portions of treaties reserved by each State, which in practice would lead to a veritable state of anarchy. We must lay down as a general rule the contrary principle, namely, that treaties on transit are to remain in force. This is the intention of the Chilean amendment, which states that “the present Convention does not cancel treaties which the High Contracting Parties have signed in respect of the matter with which the Convention is concerned.”

There is yet another point to be considered. As I have already had occasion to state, we must not establish rules of universal application in connection with transit any more than in any other sphere. We must take into account the special requirements of each continent and each locality. All the States of America assemble in Pan-American Conferences to discuss questions of special interest to them. The justification for these conferences is that all the States of the New World have similar geographical, economic and social characteristics, and that they are not separated by

(1) The text of the Chilean Amendment with regard to co-operation reads as follows : —

The Contracting Parties :

Recognising that the affirmation and regulation of the right of free transit is one of the best methods of developing international co-operation,

And being desirous of establishing this right in conformity with Article 23 (e) of the Covenant of the League of Nations, without prejudice, however, to their rights of sovereignty or authority over the routes set apart for transit :

Agree hereby to enact the following provisions.

conflicting interests or irreconcilable rivalry. They can therefore reach agreement upon a large number of matters with regard to which a world-wide understanding is as yet impracticable. I would point out in passing that these Pan-American agreements have nothing whatever to do with the Monroe Doctrine; they are not conceived in any spirit of isolation, much less of opposition to the interests of European States. It is therefore essential to preserve the possibility of concluding such agreements in all freedom, and the Convention which we are preparing must neither abrogate existing agreements nor prevent the conclusion of new ones; otherwise public opinion in all these countries would mistrust a convention which failed to respect, and almost threatened to destroy, Pan-American policy, and their Parliaments would refuse to ratify it.

In addition to agreements which we may call *continental*, we must make allowance for *regional* agreements. Is it not true that certain European States are more closely bound together than others? This is particularly the case with two groups of countries,—the Baltic States and those known as the “Little Entente”. In America similar phenomena exist; the States of Central America have even gone so far as to form a Confederation, one of the fundamental principles of which is freedom of transit. These continental and regional agreements, more especially those of the American continent, have already become an integral part of international law and of international usage. Article 21 of the Covenant of the League of Nations expressly recognises this. Article 10 of the Draft Convention also appears to recognise it, but unfortunately vague and obscure expressions are used, such as : *In the absence of such a combination of special economic, topographical and technical circumstances*. It is essential, therefore, that the Convention of Barcelona should also formally accept the principle of continental and regional agreements. This is the object of paragraph 2 of the Chilian proposal, which states : *Neither does it prevent them from concluding freely such agreements of a continental or regional character as are only valid between the Parties which have signed them*.

The last paragraph of the proposal is to following the effect : —

The High Contracting Parties will not, in future, be entitled to conclude private agreements which, in the opinion of the Council of the League of Nations, would be contrary to the spirit of this Convention. The Chilian Delegation did not wish to impose this restriction, but as a conciliatory measure it has adopted the views of the Italian Delegation as expressed in their amendment on this point. I hope that the sub-committee appointed to prepare a final draft for Article 10 will bear in mind the principles underlying the Chilian amendment.

M. TRIFON MELEAN (Bolivia; speaking in French). — I must at once state that in my opinion Article 10 of this Convention is of fundamental importance. In other words, if this article is not maintained intact, and if amendments are introduced, it will become valueless, and the Barcelona Conference will have met in vain.

Amendments intended to maintain existing Conventions in force are unacceptable, because they are opposed to the world-wide and humanitarian objects which animate the League of Nations. The expression *status quo* implies completely arrested progress and as far as international conventions are concerned, it involves the death-agony or asphyxia of States which, like Bolivia, are surrounded by other States which place restrictions on their commercial development and deny them free access to the sea. In this connection, former treaties, which are characterised by the old egoistic motives, —the desire for domination or for greater economic wealth —can in no circumstances be regarded as liberal in their tendencies.

The Bolivian Delegation feels bound to state that, were the *status quo* to be maintained with regard to existing conventions with all their faults, it would not have been worth its while to come from America to Barcelona to take part in this Conference, and it might perhaps be better to have stayed at home and continued to bear, as best we might, the burden of restrictions and privileges of which we justly complain, shut in and separated from the sea as we have been since 1879. We have come here on behalf of Bolivia with the firm intention of voting in favour of Article 10, which encourages us to break the bonds of egoism and destroy the influence of particularist interests; we could then assemble, untrammelled by the past, in a fraternal concourse of nations, the guiding principle of which would be justice, equality, and the recognition of the rights

and duties for all States, both great and small. The Convention must apply to all countries alike, and must involve no special restrictions or privileges for anyone.

Looking at the matter in this light, the Pan-American policy disappeared when the United States brought its moral and material aid to the support of Europe and mingled its blood with the blood of the old continent, and when, through President Wilson, they made their voice directly heard; his celebrated Fourteen Points are the origin both of the League of Nations, and also of the present Conference, assembled to consider how to maintain the freedom of communications and transit. I am quite convinced that, as stated in our declaration, Article 10 should be adopted without any amendment calculated to destroy its essential object, namely, the abrogation of all agreements and engagements which are incompatible with the spirit of this Convention. We can only satisfy the requirements of the new generation of mankind, which seeks new laws for the States emerging from the shock of the world war, by abrogating former laws and treaties. We also call for the abrogation of those existing treaties which are incompatible with the spirit of this Convention in regard to States such as Bolivia, which are inexorably cut off from the sea. The *status quo* does not give satisfaction to our just demands, and can never fulfil Bolivia's present and future aspirations. On these grounds the Bolivian Delegation opposes the amendment to omit Article 10, moved by the Chilian and Italian Delegations.

In conclusion, I am happy to be able to quote from the *Excelsior* the words of the distinguished jurist, M. Hanotaux, our illustrious President, with regard to the object of the Conference. Amongst other things, he said: *In the world to-day all nations are economically one, and their relations one with another must therefore be facilitated. Peoples which have no sea-board must be provided with access to the sea. The object of the Conference is freedom of transit.* We appeal to the nations to renounce their traditional egoistic tendencies, to discard a certain element of mistrust and to abandon aggressive methods. The Republics of South America, which have found the means to make such remarkable progress in the sphere of common interest and justice, have sent Delegations to Barcelona, and it is highly desirable that the United States, which are also innately conscious of these interests, should collaborate in the agreements to be concluded on the subject for which this Conference was convened.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — My amendment is merely taken from Article 23 of the Covenant, and is to the effect that : —

The Members of the League of Nations will make provision to secure and maintain freedom of communications and transit and equitable terms for commerce subject to and in conformity with the provisions of international conventions existing or hereafter to be agreed upon.

By signing the Covenant, the Signatory Powers did not create a super-State, but simply a league, or groups of States, which have met together and adopted joint resolutions; this, however, entailed no alienation of their sovereign rights, which they continue to enjoy to the full. This being so, the Portuguese Delegation considers that the proposed wording of Article 10 is contrary to the spirit and letter of the Covenant itself. The Members of the League have undertaken to secure freedom of communications and transit, and for this purpose they may jointly endeavour to seek the best method of attaining the desired object, having regard to the special circumstances of each particular State. In other words, they remain free to lay down general principles capable of adoption by all. This is the task which lies before us. This is, however, a very different matter from compelling them to cancel all obligations and agreements *inter se* which may be incompatible with the Convention to be concluded here. Moreover, there will still be the difficulty of deciding what is to be regarded as incompatible with the provisions agreed upon. Even supposing that the terms of Article 10 were in conformity with the Covenant, would all countries be in a position to accept it even if they so desired? Have not some of them signed agreements which they are unable to cancel? I should like to quote an instance taken, of course, from my own country. In 1891 we concluded an agreement with Great Britain. According to this agreement we undertake to allow transit traffic destined for Rhodesia to proceed

through the port of Beira, and to construct a railway for this purpose within a short space of time. The undertaking to construct the railway, however, was superseded by our undertaking to grant the contract for its construction to a British Company, and one of the conditions of the contract, which was to be for 99 years, was that the Government of Mozambique should impose transit duty of 3 % at the port of Beira, which was to be paid over to the Railway Company,—and this in virtue of the Convention of 1891. We are therefore bound to remit monthly to the Railway Company the proceeds of the 3 % *ad valorem* duty on all goods passing through Mozambique which enter the country at the port of Beira. Can we cancel the Convention of 1891 and the contract made with the Railway Company in accordance with the terms of this Convention, simply on the ground that it conflicts with the terms of the Convention now in course of preparation? The English Company would protest, and would seek the support of its Government. Moreover, a rather curious state of affairs exists. There are several special régimes in Mozambique which are applied to transit traffic passing through the country on its way to various British possessions in South Africa. Whereas transit traffic passing through Lorenzo Marques for the Transvaal is quite free, transit traffic for the North pays 3 %, as also do goods destined for the Belgian Congo, in spite of our desire to facilitate transit traffic and trade destined for Rhodesia, which is a colony of our old ally, Great Britain, and for the Congo, which is developing so rapidly under the influence of the great Belgian nation. This situation is the result of an agreement which we cannot cancel by action on our part alone. We are desirous of establishing ever closer relations with Spain, a country with which we are connected by ties of friendship, strengthened, moreover, by similarity of race and history and by geographical conditions, and these relations take the form of treaties and agreements between the two countries. Must we cancel them and undertake not to conclude others in the future? I only mention these two countries because they are our neighbours either in Europe or the colonies.

We can adhere to general principles which must be accepted by all countries, Members of the League, in conformity with the obligations undertaken under Article 23 of the Covenant; we can undertake not to conclude fresh agreements in the future, or not to undertake fresh obligations which are contrary to the provisions agreed upon at this Conference. But in my opinion we must retain the right, accorded by the Covenant, to adopt, within the limits imposed by its provisions, a course suited to the interests and conditions prevailing in each country. These interests and conditions vary so much that I think it will be very difficult to make them conform to fixed and detailed rules intended to guarantee and maintain freedom of communications and transit, and also equitable treatment for the commerce of all Members of the League.

These are the reasons which have led me to submit an amendment which I crave your permission to read :—

The following to be added at the end of the Preamble of the Convention :—

The present Convention shall only apply to traffic proceeding by rail or waterway. Traffic by road shall be excluded, even for goods in transit between a railway terminus or the limit of navigability of a waterway and the frontier.

ARTICLE 10. — Treaties or engagements in respect of Communications and Transit concluded *inter se* by the High Contracting Parties and at present in force, shall remain in force if the parties so desire.

Other treaties or engagements may be concluded in the future, but they will not be valid unless, after they have been registered with the Secretariat, the Council of the League of Nations declares that they do not contain any provisions which conflict with those of the present Convention.

If the two Parties concerned so desire, existing agreements may remain in force. Should one of the Parties not desire it, such agreements shall be regarded as cancelled. For the future no treaties or agreements may be concluded except in accordance with the principles laid down. This would afford the greatest possible degree of latitude.

In conclusion, I shall be much obliged, Mr. Chairman, if you will ask the Committee, in accordance with the terms of my amendment to the Preamble, to proceed to consider now whether the present agreement has also to apply to roads, or whether they are to be excluded from it. I have already asked this question twice, but I have not as

yet had a clear answer. I should very much like to have one, because it is a very important point.

M. MATSUDA (Japan; speaking in French). — The Japanese amendment is very simple. It involves the deletion of the end of the first paragraph of Article 10 from the words *in the absence of* (inclusive), as also the whole of the second paragraph of the article. In other words, the idea is to confine ourselves to the principle alone and say :

Each of the High Contracting Parties recognises in its own particular case that the present Convention cancels all *inter se* obligations and agreements which are incompatible with these terms, and undertakes not to conclude any similar agreement in the future.

The effect of our amendment is that the provisions of the present Convention would stand alone with regard to the fundamental principles applicable throughout the world in regard to freedom of transit. Our amendment does not admit any exception to the principle. In this way the principle of freedom of transit would be safeguarded as one of the fundamental guiding principles of the future international régime. Article 23 of the Covenant makes provision for the reservation of existing international conventions. This article, however, was drafted during the Conference in Paris in order to avoid placing difficulties in the way of the Powers Members of the League of Nations; but it does not in any way prevent the adoption of our proposal, which is strictly in accordance with the spirit of the Covenant. This is the idea by which we have been guided, and which underlies our amendment. There are, however, yet other considerations, affecting rather the form than the substance of the article. The text as drawn up, and as now before the Conference, is not quite complete. An enumeration of the provisions contained in paragraph 2 should be added. This enumeration would entail a somewhat difficult discussion, which, I foresee, would lead to differences of opinion. I propose, therefore, that the whole of this article should be referred for examination to the Sub-Committee (1), appointed this morning to consider Article 5, because this article touches on an instance of restriction of the principle of freedom.

M. PERIETZEANO (Roumania; speaking in French). — After the discussion which has taken place, I have only a few words to say with regard to the amendment proposed by us to the effect that a portion only of Article 10 should be retained. Article 10 is composed of two quite distinct parts, one dealing with existing and the other with future conventions. We feel that existing conventions cannot be cancelled, more especially since the new organisations, which are to be based on the principles of the new Convention, must be allowed time to consider them. We think, therefore, that the first part of the article should be retained, because existing conventions can only be abrogated by degrees as each State sees its way to adhere to the Convention for the future, and to adjust its arrangements in accordance with the terms of the Convention. With regard to the provision concerning exceptional circumstances, in which future agreements contrary to the terms of this Convention may be concluded, I consider that this is somewhat dangerous, more especially since it does not state who is to decide the circumstances which justify a deviation from the terms of the conventions to be concluded here. In such conditions, it is always possible to evade the terms of a convention on the pretext of exceptional circumstances. I am therefore of opinion that the second part of the article, from the words *in the absence of* (inclusive) to the end, should be deleted. The enumeration provided for should also be omitted. If we admit the principle that existing conventions may remain in force, this does not imply that they must of necessity remain in force. Every State is entitled to repudiate conventions when it feels that it is its duty to do so. On the other hand, it is entitled to maintain in force those which it does not feel able to cancel forthwith.

Our Delegation proposes the deletion of the end of the article beginning with the words *in the absence of*, and also of the enumeration at the end of the article.

M. TSANG-OU (China; speaking in French). — In view of the extreme importance of the Convention on Transit in respect of international communications, the Chinese

(1) See p. 82.

Delegation feels called upon to move the retention of Article 10. Its reason are as follows : This convention is to be concluded in order to establish freedom of transit on navigable waterways and railways on a footing of equality and reciprocity. Article 10 of the Convention (in conformity with the terms of Article 20 of the Covenant) forbids the conclusion, in the future, of agreements incompatible with these provisions. As regards the past, Article 10 (also in conformity with Article 20 of the Covenant) authorises States which have entered into previous engagements and agreements either to cancel them if they are incompatible with the terms of the Convention, or to extend the benefits afforded by them to all other Contracting Parties. This article, however, should not prevent the conclusion of special agreements justified by special economic, topographical and technical circumstances. As regards the past, such agreements constitute actual exceptions, and must be specially provided for in the Convention; for the future, they will only constitute apparent exceptions, and may be absolutely valid, but only between the Parties which have signed them,—provided, of course, that they are not contrary to the real spirit of the Convention.

Article 10, therefore, is of vital importance and must be retained, for, in the opinion of the Chinese Delegation, it is, properly speaking, a kind of means of adjustment between the past and the present,—in other words, it is intended to settle difficulties which may arise from the application of the new Convention, side by side with existing agreements, according to the circumstances of each particular case. Should differences of opinion ensue, the Chinese Delegation considers that they should be referred to a sub-committee appointed for the purpose.

With regard to the difficulties referred to by the Italian Delegation, I venture to call the attention of the Committee to the fact that the Commission of Enquiry took these difficulties into account when drafting the text. The Report contains the following (1) :

At one time the Committee had thought it desirable that the examination of these conditions in every future case should be submitted to the Permanent Communications and Transit Committee or to the Council of the League of Nations, but it was subsequently considered preferable not to force upon States a procedure which, in case of urgency, or of vital national concern, might prove delicate, but to leave the matter so that only in the event of a dispute arising would the normal jurisdiction provided for in Article 15 come into play.

In short, the Chinese Delegation's idea in asking for the retention of this article was simply that the Conference must deal both with the past and with the present, because the first six articles of the Convention constitute obligations upon countries of transit. By reason of the great area of China, the northern part of the country is used for transit traffic, whereas the southern part despatches goods in transit. She has no reason, therefore, to favour either those countries through which transit traffic passes or those which despatch such traffic. Her desire is simply to deal with the difficulties involved in the application of the Convention, in order that each Contracting Party may fulfil its engagements.

M. SCASSI (Greece; speaking in French).—I have asked to speak on the fundamental question which dominates this debate,—the question whether Article 10 of this scheme conflicts with Article 23 of the Covenant of the League of Nations. This view has met with support, but for my part I do not support it. What does Article 23 of the Covenant say, and above all, what is its meaning ? Article 23 imposes on the Members of the League certain obligations, amongst others that of making *provision to secure and maintain freedom of communications, etc.* That is the obligation, the positive part of the contents of Article 23. But are these obligations imposed by Article 23 unlimited ? No, the authors of the Covenant thought that it was necessary to place certain limits. We all know the care which was taken by the authors of the Covenant to smooth as far as possible the way to the conclusion of these agreements, and to secure the greatest possible number of adherents. For this reason Article 23 makes a reservation as regards the provisions of the international conventions at present in existence, and also makes reservations regarding the future.

(1) See p. 292. (Report of Commission of Enquiry.)

This is not an obligation; it is a limit to an obligation,—it is a negative expression. What is the positive expression of the limit to an obligation which I impose on anyone? It is the right which I give him to escape from this obligation,—in this case an obligation to conclude agreements. The limit imposed on this obligation is the right which is given us. But, according to the general rule, which enacts that no one is obliged to exercise his rights, and that anyone may abstain from exercising them, we are not bound to exceed this limit, though we have the right to do so. In order to make my idea clearer, I will put the question differently. However paradoxical it may appear, I maintain that it is the contrary opinion which is in contradiction with Article 23 of the Covenant of the League of Nations. The first part of Article 23 grants the right to conclude future conventions. But what is an agreement by which already existing conventions are abrogated, as is proposed by Article 10? This agreement itself is a convention. We have the right to conclude conventions, otherwise already existing conventions will bind us for ever. I therefore maintain that Article 10 does not contradict Article 23 of the Covenant of the League of Nations.

THE CHAIRMAN (speaking in French).—The Austrian Delegation has submitted an amendment as follows :

Insert in the *Preamble* a new paragraph 2 :

They recognise the desirability of the States mutually assisting each other when necessary, in order to facilitate as far as possible the putting into effect of this principle.

M. REINHARDT (Austria; speaking in French).—I ask pardon of the Conference if I depart somewhat from the line which the discussion has hitherto followed; we are dealing with Article 10, but I wish to discuss an amendment to the Preamble. As, however, the connection between this article and the Preamble has been established, I think that the present is a suitable moment to discuss the question.

At the time of the general discussion (1) I had the honour to allude to this amendment. The motive which guided me is so obvious that I do not consider it necessary to tax your patience by dwelling upon it. The Roumanian Delegate said in his excellent speech the other day that a country which was entirely free from egoism would, in his view, be as undesirable as a country which was completely enslaved to it. Our distinguished Chairman has himself confessed to a certain egoism which he considers very natural. I frankly confess that there is a little egoism in the amendment which I venture to propose, but I hope nevertheless that I have not exceeded the legitimate bounds. We have to find the means of surmounting the difficulties which may hinder the putting into practice of the principles of the Convention. The situation in Austria, in fact, is such that, even if she were to summon all her strength, she would not be able to achieve the aim of the Convention, though she desires to do so with all her heart. The economic and financial state of my country, her complete dependence on foreign sources for supplies of coal and raw materials, has led to a situation so grave that I may say that none of the countries represented in this hall has ever had to pass through such a crisis. In order to avoid repeating myself, I will venture to refer to the statement which I had the honour of submitting to the Conference and which contains all the details that may interest the assembly. The arrangements to which I refer in my text form a vital question for Austria; for other countries they would, I presume, be highly desirable, if not for the same reasons, at least on account of their own transit through Austria.

M. RESTREPO (Colombia; speaking in French).—I desire first of all to state that Colombia has no special interest in the question now under discussion. She has only a general interest, in that she desires the conventions which will be established to be liberal,—to be of such a nature as to give the greatest possible freedom to transit and commercial traffic in all countries.

I regret the tone which the Bolivian Delegate has lent to this discussion. Bolivia and Chile are countries friendly to Colombia. I hope that the conventions which we

(1) See p. 24.

sign here will not react in a manner contrary to their interests or to such engagements as may exist between them in respect of questions of past history which are still unsolved, or which have long been finally settled by treaties. It is true that the States of South America have concluded treaties and conventions in Conferences which we call Pan-American, held at Washington, Mexico, Montevideo and other towns in South America; but I do not think that if, after discussion, we approve Article 10 of the Convention, as we should do, difficulties can arise as regards the conventions which we have signed in America.

Allow me to put forward some general arguments in favour of Article 10. This article refers to conventions which the States represented here may sign *inter se*, and not to past conventions with third Powers which have not signed the Convention now under discussion. If we approve Article 10, we are exercising our right, as representatives of our respective countries, to modify, through the Convention which we are to conclude, such previous conventions (in so far as they do not conform to this one) as our Governments may have concluded, not with third Powers, but with each other. These past conventions *inter se* are modified by this one; each State, exercising its right of sovereignty and its right to treat, will here sign new conventions, the effect of which will be to abrogate former conventions by which it has hitherto been bound and which conflict with this one. But the conventions concluded with other States not represented here will remain in force, since they are not conventions *inter se*.

The American policy referred to by Dr. Alvarez led us to conclude conventions with the United States, Mexico and Ecuador, States which are not represented here. Conventions between the countries represented here will be modified; but not those with Mexico and the other States which do not sign the Convention; *they* will continue to be bound by the previous conventions. The past and the present are therefore not in conflict, and we must decide to confine ourselves to the present and the future, and to modify the past in accordance with the new conventions; otherwise why are we here? Here, to begin with, is a convincing argument. Was this scheme drawn up by madmen ignorant of Article 23 of the Covenant, who have no other object but to cancel indiscriminately all past conventions, or by intelligent and patriotic men? The Committee appointed by the Council of the League of Nations studied the scheme thoroughly, word by word, and explained all its terms in a lengthy report, and in particular it defined the words *inter se*, the meaning of which is now quite clear.

There are two kinds of conventions. It is not enough for new conventions to be merely conventions *inter se* between the States represented here; they must also conform to the following provision: *and undertakes not to conclude any similar agreement in the future*. The States represented here may conclude new conventions, but only on condition that they accept the one which we are now preparing and which must be regarded as the general constitution binding the signatory States as regards questions of transit and communications. If the new conventions are not in contradiction with this, the States may sign them and may follow a regional or continental policy, as the representative of Chile has said; but the present Convention must be considered as the charter for communications and transit.

I think I have justified with sufficient clearness my vote in favour of Article 10, as modified by the excellent proposal of the Japanese Delegation. It is clear that the authors of the Draft Convention were timid, because they placed at the end of every Article a loophole, a road, a tunnel, through which freedom of transit might escape. If the author of the celebrated words *laissez faire, laissez passer*, were to rise from the dead and hear our discussion, he would turn in his grave, horrified to see that in two centuries the world has not advanced a single step, and that it was Colbert who achieved the greatest success with all the governments of the whole world, who do not wish either to *laissez faire* or to *laissez passer*.

The Convention which we are adopting depends on what we say in Article 5, since this article deals with the sovereign right of each State to forbid the entry into its territory either of goods or persons. The illustrious Delegate of the most liberal of nations—the British—has already begun to speak of *morality*. The Committee had stopped at *the security of the State and at health*,—the universal health question, concerning which everybody agrees that there should be interference, even in spite of the sovereignty

of States; but afterwards morality and monopolies were added, and then it was all over with transit, because each State always retains the right to pass a general law called a customs law, Article 1 of which consists of an enormous list of articles the entry of which into a country is forbidden. If we now turn to the persons on this list, we find anarchists, revolutionaries, outcasts, the disabled, etc., etc. *Vade retro, Satanas!* and as I have the honour to second the modification proposed by the Japanese Delegate, I venture to recall the fact that at the present moment a great Power in America is denying civic rights to intelligent races which honour humanity—the Oriental races—and that the Japanese and Chinese are banned from the United States, the freest country in the world! What does this mean? That there is no liberty in the world, that transit is in a bad way, and that we are wasting our time here discussing trifles, leaving on one side or merely touching the fringe of the great problems.

M. LANKAS (Czecho-Slovakia; speaking in French).—Since I am forbidden to speak of the *Green Document*, I can only attribute to myself the excellent ideas contained in it which have been so skilfully put together by our Secretary-General, although this is somewhat dangerous, because these ideas were referred to just now in far from flattering terms. I entirely agree with the point of view of the Greek and Chinese Delegations, but it seems to me natural that a general convention should cancel any special conventions which might be contrary to the main principles of the Chinese Convention. The first of these main principles is equality. But it has become evident in the course of the discussion that there are certain cases in which the nations themselves declare the impossibility of establishing complete equality, because there are certain situations which enable a State to grant to one other State conditions which it cannot grant to all States. It was thought that this loophole should be left, and I think it is not a tunnel.

Other conventions—and this distinction must be clearly drawn—are admitted, even if they are contrary to the principle of equality and contain certain special provisions. But it was understood that these provisions would be so trifling in number and importance that they would not be contrary to the spirit of our work, the significance of which has been so ably demonstrated by the Delegate for Colombia. The Austrian Delegate has proposed an amendment. I do not know what will be the fate of this amendment, but it refers to a certain extent to a past which will never return. For example, it deals with an epoch in which there was no coal, but I think we are approaching the moment when there will be too much coal and when the small countries will be only too pleased to sell it. I think the Austrian amendment goes without saying, and I refer the matter to the Conference, which will perhaps apply the old French proverb : *Ce qui va sans dire, va encore mieux étant dit.*

M. SERRUYS (France; speaking in French).—When I asked for the debate to be continued, I did not foresee that it would develop to this extent; but I am extremely glad that it has done so, for while it has brought out a number of points of view, it has shown that the only one upon which we are undoubtedly all agreed is that they are irreconcilable. Amongst them are opposing views upon which the assembly is divided, and there is also an intermediate point of view which seeks to reconcile them.

In attempting to group the opinions which I have heard expressed, some with fervour, some with animation, some with circumspection, I observe that they fall into three categories, which I will endeavour to define. The first in order of discussion is that which says :—“Maintain all conventions as regards the past, but as regards the future, let conventions be subordinate to the Convention on Transit”. We have heard the latter view sustained by a great wealth of legal argument. Allow me to say that some of these arguments have impressed me. I will, however, venture to observe that I cannot agree with all the assertions which have been made. When the Italian Delegation tells us that the maintenance of the Conventions can be sufficiently assured by invoking Article 23 of the Covenant, it appeared to me that this was too wide an interpretation of Article 23; the reservation with which this article begins does not refer to bilateral agreements, but to certain international conventions. When we are informed by M. Alvarez on behalf of the Chilean Delegation that the accepted principle is maintenance of conventions, allow me to say that I am inclined to believe it, but

perhaps for other reasons than those which M. Alvarez has evinced with so much talent. We are indeed, confronted rather with legal arguments than arguments from fact, and when I considered the question myself, it was these very reasons, based on facts, which I had in mind. You tell us that we have just created a new ideal, and that we are going to put it into practice. You are quite right, but it will not be put into practice unless you know how to do so by taking into account something which is worth more than a theory,—history. You are dealing with peoples which, in some cases for generations, have laboriously worked out contractual statutes which have since regulated their relations,—statutes which contain transportation clauses. These clauses are sometimes the counterpart of commercial clauses; on the other hand, commercial and transport clauses are sometimes the counterpart of certain political guarantees which, in their turn, form one of the conditions of peace for the regions in question. You say this is what you wish to maintain in force; but this is an argument based on fact, not a legal argument. Or at any rate you say:—"Here is something which we do not wish to undermine. These are conditions which we do not wish to abolish to-day. We do not wish to obliterate everything which forms the contractual basis of these conditions by drawing up a new statute." This, in short, is the *de facto* argument which I hear from the Italian Delegation, the Chilean Delegation, and from all who have come here to support the same cause.

And now, what is the position of those who oppose this view? They wish to begin with a clean slate; they regard this as a logical result of the Convention. This view was first stated with remarkable restraint and eloquence in the Japanese proposal; I am not surprised at its being formulated. It amounts to saying:—"Abrogate all conventions and draw up a new Statute in conformity with this Convention." What is the result? The result has been pointed out to you by the Colombian Delegate. It is that we are going to cancel conventions of very different kinds, some of which have, and others have not been concluded between you. On the other hand, if you make the reservation that you will not cancel those conventions with third parties, what will be the result? You will simply be allowing these third parties to profit by the changed situation; you yourselves will be placing the Contracting Parties in a paradoxical situation in which, by fulfilling their engagements, they will place themselves in a worse position in relation to yourselves than the third parties with whom you may have made agreements. For this reason the legal distinction drawn by the Colombian Delegate does not appear to me to hold good in face of the facts. What will happen when you have created this preferential statute on the pretext that you cannot abolish certain conventions? You will have committed what amounts to an act of injustice in the form of a preferential right for those whom you seek to place in this species of second zone.

Finally, with this system of absolute levelling, which completely ignores both history and geographical rights, you will end by ignoring those diverse conditions which the League of Nations has so wisely recognised, and which differentiate the countries of the various regions of the world; you disregard certain conditions which are admittedly necessary for governing the relations between Members of the League and these countries. For example, when the League of Nations provided that mandates should be classified as A, B and C, it was simply recognising the existence of differing historical, geographical and economic conditions throughout the world,—differing conditions of development which had to be taken into account. For this reason the abrogation of certain conventions with certain States is justifiable, whereas it is not justifiable at all in the case of other States, and the abrogation of certain provisions and certain statutes would simply result in anarchy.

Then there is a third, so-called intermediate point of view which has been evolved. I recognise and pay tribute to the diligence and moderation of the preparatory Conference in Paris. It furnished you with a policy which is the embodiment of prudence, but which, allow me to say, will result in imprudence of the worst description. This is, in short, what is proposed,—on the one hand you undertake to abrogate all agreements which are in conflict with the Convention prepared by the Conference; on the other hand you undertake not to conclude any further conventions except in conformity with the aforesaid Convention; but it is added that you will maintain in force a list of conventions of your choice. If

that is to be so, when you draw up this list you will only be confirming an existing state of affairs, and that without any appeal, or rather without any enquiry. You are indeed not qualified to carry out such an enquiry. I have heard of a super-Council—an idea which has been opposed—and also of a super-Assembly; I think that if we attempt here to pass judgment upon treaties between peoples we shall be transforming ourselves into a super-Conference. That is out of the question.

What, then, are you going to do? You are going to confine yourselves to ratifying a list of Conventions, and that in the least practical way, since you will place above all suspicion contracts of which you really know nothing, and which the States who have communicated them to you will not be certain to regard as a complete statement of their rights. Hence I conclude that the Paris Conference, in its wisdom, was perfectly aware of what should be the ideal, but, being unable to realise that ideal, confined itself to consolidating a state of affairs against which in appearance it protested.

The main objection which I raise against Article 10 is that it is inconsistent; it is for this reason that the French Delegation has not proposed an amendment. The question is an extremely thorny one; the solutions hitherto proposed will not meet the case, and it would therefore be advisable to lay down a policy on this matter, or at least to find a fair compromise between the various policies. Where can this be found? I should be loath to anticipate the labours of the Committee to which Article 10 will be referred; I only desire to point out that all resources have not yet been exhausted. There is a document which I frequently study when I feel any doubts with regard to our conventions; I refer to the Covenant. Let us examine it. Article 23 is outside the scope of this debate, but, without wishing to start a discussion on it at this moment, I venture to remind you that several other articles of the Covenant may be of great importance as a guide to the Committee. Article 18, in particular, emphasises the fact that the League of Nations establishes a fundamental distinction between the past and the future. When the League of Nations demands that all international agreements concluded in future must be submitted to its *Treaties Committee*, this only concerns future agreements. But was it foreseen that, in the future, agreements on questions of principle would be concluded? Not at all. The intention was to take count of all historical situations. Turning now to the South American States, I would ask them to read Article 21 again. This article certainly makes provision for future agreements and understandings; but all that will be settled by rule of thumb,—it will be adapted to history and social conditions. As a matter of fact, situations which take into account local conditions and historical affinities are provided for, not only for America but for the whole world. In this connection, when I consider the grouping of the South American States, I cannot help thinking also of the Inter-Scandinavian Convention.

The Covenant has provided for differences between old and new treaties. In the case of new treaties, it claims on behalf of the League of Nations a right which it did not assert in the case of old treaties; it provides for the modification of agreements within the limits of its principles; and finally—and this is an important fact—it has provided a method of procedure. For those treaties which are to be maintained, for this continuation of the system of agreements, it devised a rectifying agency, but not in the illusory form in which you will find it in Article 10. It devised something which is all the more powerful because it is a reservation, applied and formulated with reservations. In article 19 it is stated that :

The Assembly may from time to time advise the reconsideration by Members of the League of Treaties... whose continuance might endanger the peace of the world.

If you are seeking for a corrective in respect of the application of contracts, you will find it here provided. Do not let us therefore improvise anything now. Do not let us try to do the work of the Council of the League of Nations. Do not let us try to provide it with a new Statute. Let us conform to the Covenant. We can find in it all the resources which we require that is the message I wish to give to the Committee which is to be appointed.

If I have intervened, it is simply because, in the interests of clearness—which seems to me the first duty of this assembly—I wished to determine what are the different theories with which we are concerned,—both those which represent the extreme points

of view on either side, and also those which maintain the happy medium. The task of the Sub-Committee will be a difficult one. I have welcomed every point of view. I welcomed the views of those who affirmed historical rights. I welcomed the opinions of those who supported the idealist point of view. I also welcomed those who tried to arrive at a compromise between these two extremes. I now trust that the Sub-Committee will bear in mind all these points of view. I am not, of course, presuming to draw up a programme for the Sub-Committee, but I venture to point out to it what is the problem that it will have to solve. Such are the sentiments with which the French Delegation would approach the work of the Committee.

M. ALVAREZ (Chile; speaking in French). — I should like to state that it is only necessary to read the proposal of the Chilian Delegation to see that it deals solely with the question of principle and does not spring from any particularist interest. Moreover, the Treaty of Peace signed on October 20th, 1904, between Chile and Bolivia is of a very liberal nature; under its terms Chile grants Bolivia freedom of transit and customs exemptions.

THE CHAIRMAN (speaking in French). — I propose to submit Article 10 to a sub-committee, and also Articles 11 and 12, which are connected with Article 10. We would beg the Sub-Committee appointed this morning to consider Article 5 to be so good as to undertake an examination of Article 10, 11 and 12 as well, on the understanding that MM. Alvarez (Chile), Freire d'Andrade (Portugal), Perietzeano (Roumania), Melean (Bolivia), Reinhardt (Austria), Restrepo (Colombia) and Van Eysinga (Netherlands) (1) are added to the Sub-Committee. It is understood that each of these delegates may be accompanied by an expert.

The motion to refer Articles 10, 11 and 12 to a sub-committee was carried.

The meeting adjourned at 8.20 p.m.

(1) For Report of this Sub-Committee see p. 132.

SEVENTH MEETING OF THE PLENARY COMMITTEE

(Saturday, March 19th, 1921, at 5 p.m.)

DISCUSSION OF ARTICLE 8 — ADOPTION OF ARTICLE 9
REPORT OF SUB-COMMITTEE ON ARTICLE 4

The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 8

THE CHAIRMAN (speaking in French). — The Committee decided yesterday that a sub-committee should meet to consider Articles 5, 10, 11 and 12. This sub-committee held a meeting to-day, but its report is not yet ready, and we must therefore postpone the discussion of these articles until the next meeting. We will therefore take up the discussion at Article 8. To this article, which deals with the application of the Conventions in time of war, three amendments have been put in, one by the French Delegation, one by the Swiss Delegation and one by the Swedish Delegation. The Swiss Delegate will now speak.

M. VALLOTTON (Switzerland; speaking in French). — The French Delegation was the first to submit an amendment, in reply to which our own amendment was submitted. It would therefore be better for the French Delegate to speak first.

THE CHAIRMAN (speaking in French). — M. Sibille will now speak.

M. SIBILLE (France; speaking in French). — The French Delegation proposes the following wording for Article 8 :

The stipulations contained in the present Convention do not in any way affect the freedom of action of belligerents in time of war.

We have assembled here to consider what provisions shall be made in order to secure and maintain freedom of communications and transit in time of peace. We have come to the conclusion that this can best be done by means of an international convention, and we have laid down the following principle : every State shall maintain a system of fair commercial dealing, and shall be bound to facilitate transit,—that is to say, shall secure good conditions for traffic across the territory situated under its sovereignty or authority. The French Delegation hastened to associate itself with these principles, for we in France are anxious to promote the development of commercial relations, since they tend to make existence easier and more agreeable. But Article 8 involves a very difficult and very complex problem. Is the Convention, which was drawn up for application in time of peace—we have always had in mind a state of peace—to be maintained upon the outbreak of war? I think not. A solemn undertaking has been given by every State Member of the League of Nations scrupulously to respect all treaty obligations in all its dealings with organised nations. It would be impossible for belligerent countries, and, I may add, certain neutral countries, to keep to the letter of the provisions which the Committee has already adopted. In order to demonstrate this, it is only necessary to call to mind the conditions of modern

warfare. A hundred years ago, armies were small; troops moved on foot or on horseback towards the enemy's position; all that generals had to do was to endeavour to meet the enemy upon a field of their own choice, where the lie of the country was calculated to secure them the advantage. The battlefield was of limited area. Only a small proportion of the nation was under arms, and in consequence commercial life went on, even in the belligerent countries, and transport traffic was conducted very much as in time of peace. To-day all is changed; we have only to remember the last war. Nation arose against nation. All the strong, young, vigorous manhood of the nation, sometimes even the old men, flocked to the frontier, whilst the women worked in the factories. Transport traffic became extremely difficult. How can the same obligations be imposed upon belligerents in time of war as in time of peace? It cannot be done. The battle-front is now, and always will be of great length and depth, and the battle zone extends over many miles; the supreme anxiety of every leader will be to effect transport with as great rapidity as possible, and to convey troops to some point upon the enemy front which he suspects to be vulnerable; in time of war, generals must now requisition a proportion of the staff and material of the transport services. Further, how is traffic to be carried on in the interior of the country? There, transport traffic is no longer undertaken by the administration which is responsible for it in time of peace, but is placed under the supreme control of the military authorities, whose first care naturally is to provide for the transport of the troops needed for national defence. Thus, during the last war we saw even the most important commercial traffic neglected, interrupted or at any rate subjected to strict control. Under these conditions, how can you impose upon a country an obligation to make provision for transit traffic, seeing that it is sometimes impossible to effect transport from one place to another or even to ensure the food-supply of one district by means of the produce of another?

Do you wish to bind these countries to afford transit for the traffic of another State when the goods in question may only be articles of luxury? It cannot be. I would further draw your attention to the fact that transport in time of war does not remain under the civil authorities, or even under private administration, but is placed directly under the military authorities. Let me tell you that if you wish to lay down regulations for questions of transport traffic in time of war, the present Conference is not competent to do this. For that purpose you would have to refer to Article 9 of the Covenant, the charter of the League of Nations, where it is laid down that.

A Permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8, and on military, naval and air questions generally.

It must surely be clear to you from the terms of this article that it is not our opinion which the Council of the Nations has to obtain, it is the opinion of this Permanent Commission, which is created specially to deal with military questions.

I want you to realise the position resulting from a state of war, and to allow full liberty of action to the belligerent countries. It is not right to face the military leaders with the alternative either, in accordance with the terms of the Covenant, of strictly observing the provisions of the Treaty and sacrificing the primary needs of national defence or, on the other hand, of deliberately violating the Treaty and devoting all their attention to national defence. What we have to do is to make a treaty which can be applied in accordance with the terms of the Covenant, both in time of war and in time of peace. In my amendment I have only mentioned belligerents, and my colleagues have pointed out that I am forgetting neutrals, and our Swedish colleague demands freedom of action both for belligerents and neutrals. On reflection, I am, to a certain extent, inclined to accept this amendment, because when war is declared neutrals are sometimes obliged to mobilise their armies, or to hand over the control of their transport services to the military authorities. That was what happened in Switzerland, and my colleague M. Vallotton cannot be ignorant of the fact. As soon as hostilities were declared, the Swiss Federal Railways were placed under military control.

I am quite ready to grant freedom of action to a State situated near the theatre of war, but I should not be willing to accord it to every neutral without exception, because we are engaged in drawing up a Convention which will bear the signatures

of States situated in every quarter of the globe. It may happen that the war zone is limited in extent, and that the South American States, for instance, are not affected by a European war. In these circumstances, I consider that those States ought to remain bound as between themselves by the terms of the Treaty. However that may be, I repeat that belligerents must be allowed full liberty of action, more especially—and I cannot lay too much stress upon this point—because the control of the railways is in these circumstances taken out of the hands of the civil authorities and entrusted to the military authorities. For this reason, I would point out that you cannot take a decision of this kind without at least asking for the opinion of the superior Commission provided for in the article of the Covenant which I have just read.

M. HANSEN (Sweden; speaking in French).—It is stated on pages 33 and 35 of the *Green Book* (1) issued by the Commission of Enquiry, that that Commission confined itself to dealing in detail with freedom of transit in time of peace, although the *obligation* has been placed upon every State to maintain such freedom in time of war, as far as the rights and obligations of belligerents and neutrals permit. A little further on, however, on page 35 of the same volume, the Commission declared that in its opinion the question of freedom of transit in time of war should be dealt with by means of a series of special provisions to be studied at a later date; whilst on page 51 (2) we read that the Commission did not consider the time opportune for dealing with the rights and obligations of belligerents and neutrals, but that these might be defined afresh in a future convention on the limitation of the rights of war. In that case Article 8, as then drafted, would at once be revised to correspond with the new text. A comparison of the considerations which I have just quoted and the provisions of Article 8 reveals the fact that the actual meaning of all these texts is not at all clear. Whilst it might be maintained that Article 8 in itself is nothing more than a simple resolution recommending the maintenance of the principle of freedom of transit as far as possible, even in time of war, the *Green Book* commentary on the article would seem to indicate that certain obligations are incumbent upon a State which signs the Convention.

I stand here as the representative of a country which is as anxious as any that transit in time of war should be as free as the rights and duties of belligerents and neutrals permit. Would it not be well, in order to avoid future misunderstandings, to define once and for all the exact purport of Article 8? It is with this end in view that I propose that the article should be more clearly worded than it is at present. In this connection I would remind you that the equivalent clause of the Convention on International Aerial Navigation, concluded at Paris on October 13th, 1919, reads as follows :

In case of war, the provisions of the present Convention shall not affect the freedom of action of the Contracting States, either as belligerents or as neutrals.

This wording has been slightly altered in the amendment put forward by the Swedish Delegation, which reads as follows :

The stipulations of the present Convention do not in any way affect the rights and obligations of belligerents and neutrals in time of war.

I should like to lay particular stress upon the fact that the attitude which the Swedish Delegation has taken up with regard to Article 8 does not in any way imply that the Swedish Government would object to the maintenance in time of war of the provisions of the Transit Convention as far as possible. On the contrary, we hope that the preliminary work in connection with the establishment of fresh rules for transit in time of war—a subject which was, as I have stated, mentioned by the Commission of Enquiry—will be put in hand without delay, and also that the rules thus arrived at will be based on the same principles as the present Convention. I am convinced that, pending the completion of this task, the various Powers will, should the need arise, apply these principles to the widest possible extent.

To sum up: either no obligation, over and above the obligations resulting from existing

(1) See p. 284.

(2) See p. 291.

international law, is incurred under Article 8, in which case it would be preferable to draft the article in accordance with the Swedish Delegation's proposal; or else Article 8 does involve certain fresh obligations, and in that case it is of capital importance that their exact scope should be made known. If we appear to press this point, we have a very good reason for doing so. My Government intends to carry out its obligations to the letter, now as ever, but in order to be able to fulfil them satisfactorily it must know exactly what they are.

The French amendment only mentions freedom of action for belligerents, leaving aside the question of the rights and duties of neutrals. As it stands it is not altogether satisfactory. I am therefore very glad that the French Delegate has said that his Delegation would not object to the insertion of an explicit reference to the rights and obligations of neutrals.

Lastly, the Swiss Delegation has put in an amendment dealing with the position—a singularly difficult one—of land-locked States in time of war. Personally, I should be very glad to give every possible satisfaction to the Swiss view, and I hope that a wording will be evolved which, whilst satisfying the claims of land-locked States, will not affect the rights and duties of other nations. Should we fail to arrive at an agreement during this meeting, it might perhaps be advisable to appoint a sub-committee to study the various amendments proposed. With regard to this question, I should like to emphasise the fact that any resolutions adopted by us now are only provisional, and that several Delegates are undoubtedly in the same position as myself, —they must refer the question to their Governments before any final decision can be taken.

THE CHAIRMAN (speaking in French).—The text of the amendment to Article 8 proposed by the Swiss Delegation reads as follows :

Pending the conclusion of a special Convention upon the rights and obligations of belligerents and neutrals in time of war, within the League of Nations, these rights and obligations shall not be affected by the terms of the present Convention, subject, however, to the following reservations :

The right of free access to the sea, over international transit routes, of a friendly State which is either land-locked or cut off from the sea by a war zone, may only be permanently restricted in respect of those routes which lie within the war zone. This right may not be permanently withdrawn even within the war zone :

(a) Unless the friendly State which is cut off from the sea refuses to comply with measures necessary for military security;

(b) Unless the friendly State makes no effort to carry out with its own means of transport the transit which it demands;

(c) Unless another route for access to the sea is not placed at the disposal of the land-locked State by the State to which the demand has been made.

The transit traffic of a friendly State which is cut off from the sea is exempt from any kind of angary or requisitioning.

M. VALLOTTON (Switzerland; speaking in French). — We had hoped in moving our amendment to obviate the necessity of finding ourselves in disagreement to-day with the country of which M. Sibille is the eminent representative, and for which he speaks in a manner which is bound to enlist the sympathy of every member of this assembly. It is a real grief to me, especially in view of this sentiment of respect,—and, may I add, of respectful affection,—which, in common with all of you, I have felt towards M. Sibille from the very outset, to find myself at variance with his views, and it is likewise painful for me to be obliged to criticise, as I regretfully must, France's attitude towards this question. Not only are we all convinced of France's terrible sufferings, but we are all profoundly affected by them, and I will say at once that it is for that reason that I am thunderstruck to find that the French Delegation should disagree with us upon a single point. As was done by the draft Article 8, we wish to bring out the principle that law should be maintained, even in time of war, as far as possible. France, on the contrary, emphasises the directly opposite theory, and thus adopts an attitude which is entirely inconsistent with that which she has always taken hitherto; whilst we are busy affirming the maintenance of law, she is proclaiming the contrary principle,—that there should be granted to belligerents complete liberty to trample that law under foot.

M. SIBILLE (France; speaking in French). — Not at all; not at all.

M. VALLOTTON (Switzerland; speaking in French). — Such a thing is not possible; there must be a misunderstanding, and I am convinced that once M. Sibille has reflected upon the matter he will admit to himself that his text ought to be that of Article 8.

M. SIBILLE (France; speaking in French). — We have always respected treaties, and that is why I will not sign a treaty which one day or another I may find myself under the necessity of ceasing to respect scrupulously.

M. VALLOTTON (Switzerland; speaking in French).— Yes; but I would have you observe that up till now belligerents and neutrals have been in this position of not possessing satisfactory formal rights, but of having various contradictory aspirations and theories upon the very subject with which we are now dealing, and these, as you are aware, have already given rise to discussion between several of the States represented here.

The crux of the matter is that we consider it too downright to propose, as is now being done, that there should be substituted for this complete absence of law a Convention set out in good and due form, and which we are to sign, in which we are asked, in reality, to admit that in time of war nothing exists any longer outside the rights of the belligerents. At this point, M. Sibille, I cannot but tell you that I utterly fail to understand your attitude towards this question. We are all convinced of the profound sufferings which France has undergone. Her sufferings, in common with those of other belligerents, arose precisely from the fact that one belligerent set at naught the rights of neutrals in time of war; and yet to-day you stand in this place as the champion of the very point of view which led to that action. May I utter an appeal to the French Delegation, who must surely be better informed upon the subject, and assure them that our true aim and object to-day is to take up the cudgels for the very belief which France has always defended,—that war must not be waged in a manner devoid of all pity;—no; it must be carried on with the very minimum of injustice. But I will not labour this point; I will rest in the hope that when the time comes for a study to be made of the various provisions, it will become possible to arrive at a definite agreement. What is it we have asked? We have asked, in the first place, for the maintenance of the very modest terms of the draft Article 8 presented to us by the *Green Book* Commission; in the interests of unity we might even, perhaps, have been content with the terms of that provision, and as late as to-day we even made overtures in that direction. Now, however, we have come into collision with a *non possumus*. We are obliged to ask the Conference for a ruling with regard to a principle which is of capital importance, in particular for land-locked States. In this connection may I state that if this Convention does not hold out to the States of Western Europe something very much superior,—in all modesty we can say it,—to the existing law in time of peace, then we,—we in particular, because Switzerland is not a maritime State,—become a party to the Convention only in a spirit of solidarity, in the belief that the co-operation of every European State may perhaps be needed in order to introduce similar law into other parts of the world which have not yet arrived at the same unity through participation in plurilateral Conventions.

I must make it clear that there are in this Convention two things which for us are not only a *sine quâ non*, but even perhaps constitute the only use which the Transit Convention may have in the future. These are the question of maintaining our free access to the sea, and that of the creation of an impartial conciliatory organisation which shall rise superior to the clash of wills between the different Powers. I am in a position to declare that these are the two points of really vital interest for us, and I should like to add that the whole future attitude of Switzerland, towards both this Convention and any which may ensue, will in great measure depend upon the decision arrived at to-day.

This is not the place in which to recount our misfortunes arising from the blockade of which we were the victims. I will only declare, without attempting

to prove it at any length, that Switzerland was really perhaps the only country, in Western Europe at least, which was effectively blockaded during the last war. We realise that the surrounding States made repeated attempts to come to our rescue, but what we should like to elicit from this Conference is some united effort in the direction of substituting a minimum right for a mere favour in this matter. We would ask at least the recognition of Article 8,—that pious wish,—the admission that in principle freedom of transit and the provisions of the present Convention shall be valid in time of war as far as is permitted by the rights of belligerents and the duties of neutrals, and also by the duties of belligerents and the rights of neutrals. I will once more appeal to the French Delegation to support Article 8, and if we can agree on this point I am quite prepared to renounce the idea of any wider or more comprehensive measure.

If I did not believe this, I should take the liberty of speaking at greater length on the origin of the additional stipulations which we have put forward in the interests of land-locked States.

M. ALVAREZ (Chile; speaking in French). — The Conference has now before it one of the gravest of problems. The Chilian Delegation has no intention of taking part in the discussion. We support the proposal made by the French Delegation to appoint a Committee to study the question of determining the rights and obligations of belligerents and neutrals. I desire to give you a brief account of the work of the American Institute of International Law in connection with the question of maritime neutrality. In each of the twenty-one Republics of the New World there has been instituted a National Society of International Law, and the federation of these Societies constitutes what is known as the American Institute of International Law. The Institute has already held two sessions,—one in 1916 at Washington, and one in 1917 at Havana. As early as 1916 it was realised by the Institute that when the Great War was over there would open before humanity a new era, and the Institute held it as a duty to concentrate all its efforts upon the study of the reconstitution of the comity of States, and of the system of law by which they should be governed. The Institute had the satisfaction of noting that the views it expressed in 1916 became dominating features in the Covenant of the League of Nations. With regard to the reconstitution of International Law, there was voted by the Institute a *Declaration upon the Rights and Duties of States*, and drafts bearing specially upon the fundamental facts with regard to International Law, such as the origin, development, interpretation and sanctions attaching to international laws, were submitted to the examination of the various National Societies. A draft on the *Regulation of Maritime Neutrality* was accorded special attention by the Institute. Certain aspects of the draft are *idealistic*, whilst others are *practical*; it is idealistic because it aims at a radical alteration in the regulations at present in force with regard to maritime neutrality by according the rights of neutrals predominance over those of belligerents. This *idealistic*, and even in some sort *revolutionary*, aspect of the measure as proposed is designed in the first place to educate public opinion, for we can only hope to see the triumph of the ideals contained in the project of which I have spoken to you when the League of Nations has been set upon a stable basis and has found a solution for the various outstanding problems which are of vital importance. But this draft measure of which I have spoken also possesses an essentially practical side, in that it turns to profit the experience afforded by the war, bringing into prominence the defects and omissions of the Hague Convention of 1907 on Maritime Neutrality. I have laid these facts before the Conference in the hope that they may cause to be appreciated the efforts which the scientific institutions of the *nouveau monde* have put forth in the endeavour to build a *monde nouveau*.

M. PIERRARD (Belgium; speaking in French). — M. Sibille has given us a striking picture of the needs of belligerent States in time of war. He has shown us how they are obliged to requisition every means of transport. As a matter of fact, victory in war should belong to him who can hold out the longest from the point of view of transport, and I think, therefore, that we should be pursuing the policy of the ostrich if we ignored this need. M. Vallotton, on the other hand, has given us a graphic descrip-

tion of the terrible situation of his country during the war, and everyone must agree that that, too, is worthy of consideration. In my opinion the question is one that can be looked at from different points of view. A State may depend for its existence upon the good-will with regard to transit of a neighbouring State. This State may be either a neutral or a belligerent, it being understood that, if the latter, it is on friendly terms with the neutral State. Is the belligerent State in time of war to oppose the passage through its territory of goods bound for the neighbouring neutral State, and is the neutral State also to place obstacles in the way of goods intended for the provisioning—I am naturally not speaking here of goods for the military provisioning—of the neighbouring belligerent State? These are vexed questions.

But there is yet another aspect of the question which M. Sibille does not appear to have considered. Mention has been made principally of rolling-stock and other railway material. What about naval and shipping material? Would not a neutral State have the right, for instance, of forwarding through the territory of a belligerent State goods destined for a sea-port, employing for this purpose its own rolling-stock and making no demand upon that of the belligerent State, which will have requisitioned all its own means of transport? M. Vallotton stated the case in the clearest possible fashion, nor did he hide from us the fact that Switzerland considers this to be a question of capital importance, whilst our friends of the French Delegation attach no less importance to it. I do not know whether Article 9 of the Covenant of the League of Nations, to which M. Sibille referred, bears upon the contingencies with which we are here dealing,—namely, the question of transit, for Article 9 refers back to Articles 1 and 8 of the Covenant, whereas in reality it is Article 23 which provided the material for this Conference. If we attempted to reach a decision on this subject in full Committee, I think that we should only prolong the discussion eternally, and I therefore propose that the question be referred to a Committee, time for reflection being thus given to all the parties concerned.

M. SKYBAK (Norway; speaking in French). — It is reported on page 35 of the *Green Book* (1) that in the opinion of the Commission of Enquiry the question of freedom of transit should form the subject of a series of special provisions, of which the study should be undertaken at a later date, and I am instructed by my Government to express the hope that it may not be long before the various Powers see their way to agree upon some more explicit and more detailed provisions with regard to a question which stands in particular need of clear rules.

M. COLDING (Denmark; speaking in French). — The rights and obligations of belligerents and neutrals have up to the present time been too vague and ill-defined for us to be in a position now to form an idea of the precise meaning of Article 8. Unless it be possible to lay down more clearly in that article the rights and duties of belligerents and neutrals in time of war in regard to transit, Article 8 in its present form appears to us dangerous, and for this reason we prefer the Swedish text; but we would also, in common with the Norwegian representative, express the hope that all these questions will be dealt with by a special committee as soon as possible, and form in the future the subject of a convention, in accordance with the suggestion made by the Commission of Enquiry.

M. VAN EYSINGA (Netherlands; speaking in French). — It is with great interest that I have listened to the debate which has taken place on Article 8. We have before us two separate texts which, upon examination, are really not so very different.

Whilst Article 8 of the Draft Convention lays down that the Convention shall be valid in time of war, so far as the rights and duties of belligerents and neutrals permit, the French amendment confines itself to the following words: *The stipulations contained in the present Convention do not in any way affect the freedom of action of belligerents in time of war.* The difference in principle between the two texts is not very great, and yet it arises from a decided difference of opinion. How are we to explain this phenomenon? I think we may find an explanation in the

(1) See p. 284.

authors' different conceptions of war. The speakers in this debate have had in mind war conditions as they were prior to the coming into force of the Covenant of the League of Nations. There is no need to dwell upon the old conception of war as a sovereign right of every State, and finding its justification in itself, any State which has declared war being free from responsibility towards any other State for so doing. With this conception of war, it is quite conceivable that the point of view should be the following : the interests of the belligerents must come first, as in the days of *inter arma silent leges*. May I remind you that we do not find this conception of war among the great Spanish writers of the 16th century—the Victorias, the Vasquès, the Suarès, according to whose teaching there were just wars and *bella injusta*. Homage is respectfully paid to these great Spanish writers by a Dutch authority of the 20th century, all the more freely because Grotius himself borrowed the idea from a Spaniard. Whilst the war of independence, which we were obliged to carry on for eighty years against Spain, was actually in progress, Grotius persistently manifested the most profound veneration and admiration for his illustrious Spanish predecessors. This idea of discrimination between just and unjust war has now disappeared completely; but lofty ideas, though they may be lost for many years, always reappear, and the idea was actually revived in the Covenant of the League of Nations. I would beg the Conference, then, to bring to the study of this question the idea which thus underlies the Covenant. It is your duty to look upon the possibility of war from the same point of view as in the Covenant, and no longer according to the tradition which has been banished by the Covenant. What is the attitude towards war of this Covenant, our charter? It may be summed up in a word by saying that the Covenant forbids war. It forbids it in the most summary fashion by the terms of Article 13, where it is laid down that there must not be war, but that whenever any serious dispute arises, the nations shall resort either to arbitration or to conciliation. You may perhaps reply that when grave disputes arise, this article will not be applied. This hypothesis, however, is not overlooked in the Covenant; Article 16 provides for the non-compliance of any State, whether a Member or not of the League of Nations, with the terms of Articles 12, 13, or 15. In such a case there are to be called in against a recalcitrant State all the military and economic forces of the League of Nations. There will be a war, but one of a kind which we need not deal with at the moment, as it does not form the subject of Article 8, which is now under discussion; Article 9 it is which provides for such a contingency, and it is only when we come to discuss this article that we shall speak of war carried on by the League of Nations in order to enforce the execution of the Covenant. Does Article 8, then, not foresee the event of war at all? It does foresee it, but only in exceptional circumstances—for instance, where the arbitration and conciliation provided for in Article 13 have failed. For these very rare cases are we to revive the old idea of war, *inter arma silent leges*, or shall we not rather follow the lead of the Covenant of the League of Nations and declare that in such an event the right of free transit, as proclaimed in various conventions concluded under the auspices of the League of Nations, shall continue in force? To put the question in this manner comes near to answering it.

The Netherlands Delegation supports the proposal already made by several delegates to refer Article 8 to a small committee, but we think it our duty to make a general statement of the case and to request the members appointed to this small committee to look at war from the same point of view as that from which the hypothesis is viewed by the Covenant of the League of Nations.

THE CHAIRMAN (speaking in French). — I certainly think that we should do well to refer Article 8 to a sub-committee, and this would conform to the various suggestions which have been made. I propose the following as members of this Sub-Committee :

MM. PIERRARD (Belgium);
BROCKMANN (Spain);
SIBILLE (France);
BIGNAMI (Italy);
MATSUDA (Japan);
VAN EYSINGA (Netherlands);

MM. HANSEN (Sweden);
VALLOTTON (Switzerland);
LANKAS (Czecho-Slovakia);
FERNANDEZ Y MEDINA (Uruguay).

It was decided to refer Article 8 to this Sub-Committee.

ARTICLE 9

THE CHAIRMAN (speaking in French). — We now come to Article 9, to which there are no amendments proposed. Unless anyone wishes to speak, I will put this article to the vote.

Article 9 was adopted, 31 voting for.

REPORT OF SUB-COMMITTEE ON ARTICLE 4

THE CHAIRMAN (speaking in French). — As I said at the beginning of the meeting, Articles 10, 11 and 12 are reserved, and I therefore propose that we return to Article 4. You will remember that a Sub-Committee was set up to deal with the question of tolls and of the reservation of flag rights. M. Serruys was appointed Rapporteur of this Sub-Committee. I call upon him to speak.

M. SERRUYS (France; Rapporteur; speaking in French). — At its meeting on the evening of March 17th, the Committee referred to a Sub-Committee the amendments put forward by the Roumanian Delegation on the subject of Article 4 (1).

The first of these amendments related to the question of tolls. It read as follows :

Similarly, a reasonable scale of dues intended to cover the expenses of construction, upkeep, supervision, lighting, etc., in addition to charges collected for services rendered, such as lockage, life-saving, etc., shall be levied upon every means of transport which is permitted to pass over routes not subject to monopoly.

The Roumanian Delegation stated that the chief aim of the amendment was to determine a scale of tolls, and the Sub-Committee had therefore to deal with the two following questions :

A. Are tolls included under Article 4 of the present Convention?

B. Is the scale which is there fixed for tolls which may be levied upon traffic in transit similar to the general scale of transport rates defined in Article 4?

The Sub-Committee replied to both these questions in the affirmative. It was decided that, although Article 4 should not contain an explicit mention of tolls, yet as these were evidently referred to, it would be desirable to alter the text as follows :

ARTICLE 4. — *Charges.* — The High Contracting Parties undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock or other means of transport on the routes operated or administered by the State or under concession...

The object of the slight change, which incidentally has caused the French and English texts to correspond more closely, is to include mention not only of operating services but also of administrative services which are subject to a monopoly or under concession. In this way the question of tolls, should they be levied by a concessionnaire, is now expressly provided for and regulated under Article 4. In the English text the word was *administered*, whilst the corresponding French word used was *exploitées*. The two words are not identical in meaning, and in countries where the French language is used a distinction is made between the operation and the administration

(1) See p. 69.

of railways. The word *operation* is used in connection with the material elements of traffic, whilst the word *administration* refers to all questions connected with the staff, the management or the concession of certain auxiliary departments, and the best method seemed to be, therefore, to include both words. Furthermore, by introducing the word *administrées* into the French text, and the word *operated* into the English text, we are able to cover any auxiliary services which may be conceded, and in this way a solution is found for the question of tolls.

In their second amendment it was proposed by the Roumanian Delegation to reserve the possibility of establishing scales of transit rates differentiated according as to whether the flag of the vessel importing the goods was the national flag or a foreign one, by inserting at the end of Article 4, after the words *of the through journey*, the words *except in the case of nationals of the country of transit*. In addition to the economic considerations laid before us at the meeting held on Wednesday, March 16th (1), the Roumanian Delegation emphasised the connection between this amendment and Article 4 of the Draft Convention on the International Régime of Railways, under which differentiation in respect of combined tariffs is not precluded. The Committee as a whole, with the exception of the Roumanian and Italian Delegations, were of opinion that, although differentiation in respect of combined tariffs was not precluded by the Railway Convention,—which, incidentally, had not yet been discussed by the Conference,—such differentiation in respect of transit would appear to be in direct conflict with the governing idea of the Draft Convention, and particularly with the principle of equality laid down in the last sentence of Article 4. In the course of this debate the Roumanian and Italian Delegations rejected the view held by the majority of the Committee, both of them maintaining that a country should be permitted to establish tariffs or any other regulations for goods traffic, differentiated according to the flag of the vessel transporting them. In view of the opposition of the Roumanian and Italian Delegations to the view held by the majority of the Committee, and in view, also, of the serious nature of a proposition of this kind, which—I speak for the majority—is directly opposed to the whole tenor of Article 4, the Sub-Committee proposes, if the Committee thinks it desirable, to re-open discussion upon this important point. In the form which I have just laid before you, with the readjustment in both texts with regard to the words *administer* and *operate*, Article 4 seems to us to lay down a perfectly consistent policy. The addition of the words proposed by the Roumanian Delegation would convey quite another idea, and it is for the meeting to decide whether the amendment should be adopted or not. A question so serious surely cannot be decided except by a vote of the Conference, and it is in deference to the opinion of our colleagues that we propose, if you think it desirable, to re-open the debate. The discussion in the Sub-Committee was of a technical character, and in the course of it various questions were raised which occasioned anxious consideration on the part of certain delegates. For example, we said to our Roumanian and Italian colleagues :—You have the right to levy maritime dues,—for instance, surcharges in respect of the flag flown by a vessel,—because these are not referred to in the Convention. The majority of the delegations represented on the Sub-Committee were not at all in favour of this system, and even the British Delegation clearly signified its objection to the idea. As a matter of fact, however, such surcharges, which are levied in various countries, are not contrary to the terms of the Convention, because it does not deal with maritime matters, but as the question had been raised, we desired to make it quite clear that we all considered that it did not come under the terms of the present Convention.

Another question, which I myself introduced, arose with regard to Article 4. The next task of the Sub-Committee was to draw up a passage for insertion in the Closing Protocol, in accordance with the decision arrived at by the Conference (2) on March 16th with regard to the reservation of flag rights. This text is now before you, and you will recollect the question which it was intended to settle. We were all agreed upon one point,—that the Convention also does not contemplate the reservation of flag rights in respect of traffic between two places situated in the same territory. Upon

(1) See p. 67.

(2) See p. 70.

the motion of the British Delegation, we voted for the insertion of the following passage in the Closing Protocol :

It is understood that nothing in Article 4 compels any State to authorise foreign vessels to participate in traffic between two points within its territory, when such traffic, according to the laws of the country, is or can be reserved for the national flag.

This text demonstrates the general view taken, that what we have called the reservation of flag rights is not affected by the Convention. In this connection, our Greek colleague raised the question whether the Convention dealt with the subject of water transport traffic. In our opinion it does not do so, and it is certain that the question will be raised again during the discussion on the Waterways Convention. One other question was submitted to the Sub-Committee (1),—that of the period before the expiration of which Article 4 should be applied. It will be remembered that the Brazilian Delegation put forward an amendment to the effect that a reasonable period should be allowed to enable the States which are Parties to the Convention to adapt their budgets to the new régime set up by the Convention. There are certain States which, following the signature of the Convention, will indeed be compelled to adapt their legislation and, in particular, their budgets, to meet its terms. Some of them levy certain differential charges, sometimes yielding a considerable revenue. That revenue they declare themselves prepared to relinquish, but they must be given time to make the necessary changes. It seemed to us that this question was one which should not be raised in connection with Article 4, and that our terms of reference from the Committee were not wide enough to enable us to deal with it, but that it was included under Article 20, which treats of the various periods within which the provisions of the Convention are to be applied. Finally, we came to the conclusion that it is really to this article that the Brazilian amendment properly belongs.

There you have the results of the labours of your Sub-Committee. I consider that they allow either of approval on your part, or of further discussion should we not be in agreement upon anything that admits of differing interpretations. A vote is also needed for the slight change which we have made in the text of Article 4, in order that there may be no possible doubt as to the interpretation of this article.

THE CHAIRMAN (speaking in French).—The Committee would like to tender its grateful thanks to M. Serruys for his Report.

M. SINIGALIA (Italy; speaking in French).—In connection with the discussion which took place yesterday on the same article, and in particular on the question of combined tariffs, I had the intention of supporting the Roumanian proposal. I was apprehensive lest the Transit Committee, by upholding the view taken by all the delegations with the exception of the Roumanian, should have committed an act which would be in conflict with the terms of Article 4 of the Railway Convention. At the time when the latter was drafted, there arose the same question, and it occasioned a protracted debate which resulted in the present text. This wording was adopted precisely for the reason that the same point was then raised which is now being raised by the Roumanian Delegation, namely, whether, in connection with these combined tariffs, it is admissible that preferential treatment in favour of the national flag should be allowed, it being, of course, understood that a provision of this nature would not place any obstacle in the way of perfectly equal treatment for all flags which are not national flags. In fine, the question resolves itself into this,—complete equality of treatment for every flag, but with preferential treatment for the national flag. As it seemed to me that this principle was already embodied in Article 4 of the Railway Convention, I supported the proposal which was made yesterday. I fully understand the reason for admitting a principle such as this one in the Railway Convention. It is said that this principle would cover imports and exports, but surely a totally different principle should not be admitted for traffic in transit. If certain goods are introduced into a country under the national flag, and if the latter is accorded the benefit of pre-

(1) See p. 70.

ferential treatment, a difference should be made according to whether the goods remain in the country or are merely passing through it in transit, and it was only in view of this consideration that I supported the Roumanian proposal.

I think that the debate might either be continued now, whilst the Transit Convention is still under discussion, if that is considered the better course, or else postponed until the discussion of Article 4 of the Railway Convention. I think there is a close connection on this point between the two Conventions.

M. CARACOSTEA (Roumania; speaking in French).—I will only add a few words to the arguments used by my Italian colleague. I should like to draw the attention of the Committee to the fact that in our country a still more special position obtains. The State is the owner of a certain number of vessels, in the same way as it also owns certain railways. There is no company working these vessels or these railways; they are operated by the State, and as the possibility has been admitted of establishing preferential treatment for exports and imports, could not this be done in respect of transit traffic also?

M. SERRUYS (France; Rapporteur; speaking in French).—Without actually taking part in the debate upon those questions which are dealt with in our Report, I will just mention the reasons which led to the rejection by a majority of the Roumanian proposal as now supported by the Italian Delegation. There were two dominating factors which served to influence us in this matter. The first one is a question of procedure. We considered that we ought not in Article 4, which deals with a special régime, —that of transit,—to prejudice any decisions at which the Conference might arrive with regard to maritime administration, if a convention upon this subject ever came to be laid before it. We further arrived at the conclusion that questions such as surcharges and differential treatment in respect of the flag flown were not only questions of a maritime order, but were also frequently economic questions connected with the control of imports and exports,—in fact customs questions,—and that they should be kept separate from transit questions, it having been precisely the intention of the authors of the Convention to indicate clearly that the transport tariffs with which Article 4 deals should be kept quite clear of any economic considerations,—in fact, that economic protection is one thing and traffic in transit another. That was the view which prevailed, and the question therefore becomes one of procedure.

There was yet another question which occupied our attention. We did not think that by establishing combined tariffs in the manner recommended by the Roumanian Delegation it would be possible in practice to lay down the rules of equality and of equitable dealing which should govern a régime such as that proposed, in view of the fact that certain considerations intervene, the significance of which we cannot gauge. It really amounts to not confusing the situation with the considerations upon which our view is based, and which should remain independent, and it is also a question of the impossibility of judging correctly the significance for the Transit Convention of the proposed amendment. This has led us to reserve the question, and to give our verdict against the Roumanian amendment. The reasons which I have just given you were, I think, those which underlay the decision of the majority of the Sub-Committee to reject the Roumanian proposal as seconded by the Italian Delegation.

M. SINIGALIA (Italy; speaking in French).—I must thank the French Delegate for the explanation which he has been kind enough to give, and which will serve to dispel the misunderstanding which has crept in. At the end of his statement he declared that the Roumanian proposal had been rejected by a majority of the Sub-Committee only in order that the question of differential treatment for the national flag might be reserved. If this be so, and if the reservation contemplates a later discussion upon the substance of the question in connection with the Railway or some other Convention, that is another matter.

M. SERRUYS (France; Rapporteur; speaking in French).—I will reply in as explicit a fashion as possible to that query. On the one hand, it seemed to us that the question should be treated quite apart from that of transit; that was a motive founded

on procedure. Then there were objections in principle on the part of the British Delegation; with these, which amounted to a rejection of the theory, I was in agreement. That theory, incidentally, may be voiced once more when the time comes to discuss the International Waterways Convention or the Ports Convention; at all events, the question can be raised when we come to deal with navigation, for instance, whilst it will necessarily re-emerge if ever we come to draw up a convention on maritime administration. It was the opinion of the Sub-Committee that, in view of the general spirit of the Convention, a proposal such as this would be in conflict with it, whilst it also appeared that as regards the question of procedure, we were not competent to lay down rules on other matters appertaining, perhaps, to railway transport rates, etc. The question is not one in which transit only is concerned. I will add that, with regard to the question of combined tariffs, we gave a negative answer. That was exactly the situation as viewed by the majority of the Sub-Committee. I think it is quite clear.

M. SINIGALIA (Italy; speaking in French).—You said just now that the Sub-Committee expressed its opinion following upon certain arguments put forward by the British Delegation.

M. SERRUYS (France; Rapporteur; speaking in French).—The reasons given by us were as follows : Do not let us confuse with transit questions, questions such as surcharges in respect of the flag or any system of differential treatment which we might set up, for they very frequently include considerations which have nothing whatever to do with transit. The attitude of the French Delegation has been known to you for a long time; it is in fact quite clear from the *Green Book*, and it has been proclaimed here more than once. Transport questions are one thing, and questions of imports and exports and of protection for imports and exports are another, and we wish not to confuse two things which appear to us to comprise different theories and to require different treatment. That is the exact attitude of the French Delegation. If I have interpreted wrongly the view taken by the British Delegation, I should be most grateful to Sir Hubert Llewellyn Smith if he would be good enough to let me have his views on the subject.

M. SINIGALIA (Italy; speaking in French).—Then the debate is not at an end ?

Sir Hubert LLEWELLYN SMITH (Great Britain).—In reply to the suggestion made by my friend M. Serruys, I am only too glad to associate myself with his explanation of the decision arrived at by the majority of the members of the Sub-Committee, and of the reasons which actuated them in doing so. I should like, however, to say one word about the view of the British Delegation in this matter. We are not now discussing a Railway Convention; we are not now discussing a Waterways Convention; we are discussing a Convention on Transit,—transit by water, transit by rail. We laid down clearly in Article 4 that charges levied on transit traffic are not to depend upon the flag, the nationality, or the ownership of the vessel in which the goods arrive or leave. That does not in any way affect the general question of combined rail and sea tariffs, which could be studied in connection with the Railway Convention,—that is to say, it does not affect it in general, but it undoubtedly influences it in respect of transit rates. I would therefore say to M. Sinigalia :—“Should the Transit Convention be adopted in its present form, you are free, when the Railway Convention is discussed, to make any proposal on the subject of railway rates which is not in conflict with the decision expressed in Article 4 with regard to charges for the transport of goods in transit.” Clearly, however, we cannot reserve the whole question of these charges; they must be dealt with in connection with the present Convention. Surely it hardly admits of argument, that, unless the whole foundation of our Convention is to be destroyed, we must lay down the principle in it that charges for goods in transit are not to depend on the flag of the vessel in which they are brought to the country or taken away from it.

M. SINIGALIA (Italy; speaking in French).—I am sorry to be obliged to ask for one more explanation; I do not quite understand the objection. We are told that differential treatment in respect of the flag cannot possibly be discussed under the head of transit, but that it may be discussed in connection with the draft Railway Convention,—that it will then be permitted to maintain the principle of railway tariffs differentiated according to whether the flag is a foreign or a national one. Now these very railway tariffs apply just as much to goods brought to a port of the country by a vessel of the country, and bound for or coming from the interior of the country, as to goods brought to a port of the country and destined, for instance, to leave the country across a land frontier. This being so, what is the proper place for a provision which refers to transit traffic of this nature? The Transit or the Railway Convention? Personally I do not think it matters, but it must be clearly understood that if the principle envisaged in the present Convention be adopted in the Railway Convention, then it must also be applied to railway traffic in transit across a State, when that traffic has been brought to a port of the country under the national flag, and is to leave it across a land frontier, or *vice versa*. I should like it to be understood that this stipulation should not be aside.

M. FREIRE D'ANDRADE (Portugal; speaking in French).—I rise in order to ask the Rapporteur to explain a certain point. Judging from his words, it would appear to me that the Report does not touch exportation, and that a State is at liberty to lower export duties on national goods which leave the country in national vessels. Have I understood aright?

M. SERRUYS (France; Rapporteur; speaking in French).—There are, I think, two points which should be made clear in reply to the two questions which have just been asked me.

M. Freire d'Andrade enquires whether a State may establish different freight rates or different charges in favour of its own vessels as distinguished from foreign vessels. I agree. This falls under a convention on maritime matters and not under the Transit Convention. With regard to transport by rail or water, a State may establish internal import or export tariffs which are lower than transit tariffs. It is quite at liberty to do so.

M. FREIRE D'ANDRADE (Portugal) (speaking in French).—Thank you.

M. SERRUYS (France; Rapporteur; speaking in French).—We have no desire to prevent the application by a State of internal import or export tariffs which differ from transit tariffs, but we do wish to prevent the establishment of transit tariffs differentiated according to whether the goods in transit are carried under the national or under a foreign flag. That is where the disagreement begins, and all sorts of different ideas are mixed. To that we cannot consent. The question is therefore definitely settled. With regard to procedure, it is understood that the Italian and Roumanian Delegates may, if they like, raise the question in connection with railways, or with a convention upon maritime matters, or with the Convention upon International Rivers, but should the question ever arise, I should like to state that the French Delegation would, for identical reasons, maintain its attitude, and would contest the proposal.

THE CHAIRMAN (speaking in French).—I will recall to the assembly that a slight modification in the French text of Article 4 was proposed by the Sub-Committee, —namely, the addition, after the words *voies exploitées*, of the words *ou administrées*. (English text: insert before the words *administered by* the words *operated or*.)

Admiral DE ZWIERKOWSKI (Poland; speaking in French).—Mention has not been made of subsidies. I am not quite clear as to the views held by the French and British Delegations on this subject. For instance, has the State the right to subsidise a shipping line? And can any line so subsidised undertake transport on a lower scale of tariffs than other lines? Such a line would, in reality, have the same scale of tariffs

as the others, but a proportion would be repaid by the Government. Is this point covered ?

M. SIERRUYS (France; Rapporteur; speaking in French).—That is a question which has no connection with transit; it is simply a commercial practice, which may sometimes have dangerous result but which has nothing to do with our draft Transit Convention.

THE CHAIRMAN (speaking in French).—Unless anyone else wishes to speak, I will now put to the vote Article 4, of which the text has been modified as follows :

ARTICLE 4. — *Charges.* — The High Contracting Parties undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock or other means of transport, on the routes operated or administered by the State or under concession, irrespective of the points of departure or destination, tariffs which shall be reasonable as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to facilitate international traffic as far as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the through journey has been or is to be accomplished.

Article 4, with the above text, was adopted.

The meeting adjourned at 7.50 p.m.

EIGHTH MEETING OF THE PLENARY COMMITTEE

(Monday, March 21st, 1921, at 11 a.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 5

REPORT OF SUB-COMMITTEE ON TOWAGE — DISCUSSION OF ARTICLE 13

The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

THE CHAIRMAN (speaking in French).—I should like to propose an additional member for the Sub-Committee to examine Article 8, namely, M. Holck-Colding, one of the Danish Delegates. I presume no one will object to this.

REPORT OF SUB-COMMITTEE ON ARTICLE 5

THE CHAIRMAN (speaking in French).—We will now proceed to discuss the text of Article 5 as amended by the Sub-Committee (1).

I will ask the Secretary-General to read you the text.

M. HAAAS (Secretary-General; speaking in French).—The following is the text adopted by the Sub-Committee :

ARTICLE 5. — None of the Contracting States shall be bound by the present Convention to afford transit for passengers whose admission into its territory is forbidden, or for goods of a kind of which the importation is prohibited, either on the grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, luggage, goods, particularly monopolised goods, vessels, coaching and goods stock and other means of transport, are *bona fide* in transit, as well as to ensure that passengers in transit are in a position to complete their journey and to avoid danger to the safety of any route or means of communication.

Nothing in this Convention shall affect any measures which any of the Contracting States are, or may be, required to take by virtue of any general international conventions to which they are parties; or which may be concluded hereafter, particularly those concluded under the auspices of the League of Nations, relating to the transit, export or import of a particular class of goods, such as opium or other dangerous drugs, arms or the produce of fisheries or general conventions concluded with a view to preventing the infringement of the rights of industrial, literary or artistic property, false marks, false indications of origin, or other methods of unfair competition.

THE CHAIRMAN (speaking in French).—It is pointed out that there should be inserted before the last two words of the second paragraph, in the French text, the word *ne* : *ne soit compromise*, but there seems every reason to think that the addition of this word is unnecessary.

M. SERRUYS (France; speaking in French).—It is unnecessary. In the French translation there is a slight divergence from the English text; the last paragraph does

(1) See p. 82.

not express accurately the decision arrived at by the Sub-Committee. In the third paragraph we read :

Rien dans la présente Convention ne saurait affecter les mesures qu'un quelconque des États contractants est ou pourrait être tenu (required) de prendre en vertu de conventions internationales...

Ought not the words to be rather *est ou pourrait être amené à prendre en vertu de conventions internationales*, instead of the word *tenu*? There is a slight distinction in the meaning which should be made clear.

The text now before us goes farther than was originally intended. We had meant to make an exception for any measures which might be taken by a State on its own authority, in pursuance of international conventions, with regard to literary and artistic property, false trade marks or false appellations, and we said that any measures taken in pursuance of such conventions, or which a State might possibly be called upon to take in pursuance of them, should be legitimate, whereas the English word *required* refers to the measures which a State is bound to take. The conventions in question do not in any way specify what measures are to be taken, the parties simply being pledged to take any necessary measures, and it is for this reason that I should prefer the words : *les mesures qu'un État serait amené à prendre...*, since the conventions have allowed the States the initiative,—*en vertu de ces conventions*.

Sir Hubert LLEWELLYN SMITH (Great Britain).—I am fully in agreement with the alteration proposed by M. Serruys, but I think that, if it is adopted, a search will have to be made for the right word in English. I do not think the word *required* is the right one.

M. HAAS (Secretary-General; speaking in French).—The Sub-Committee had to deal with three important points. The first was the one which has just been raised once again—the question of restrictions justified on grounds of commercial fair dealing. The Committee which discussed this question appeared to be unanimously agreed to express the wish that the Convention on Freedom of Transit should not be a means of facilitating unfair methods of commerce. Certain objections were, however, occasioned by the very elastic form of words proposed by the French Delegation, and in order to take these into consideration, whilst avoiding the inconvenience of a too elastic version, the end of Article 5 was drafted by the Sub-Committee in the following words : *or those concluded with a view to preventing the infringement of the rights of industrial, literary or artistic property, false marks, false indications of origin, or other methods of unfair commerce*.

Another point which occasioned considerable discussion in the Sub-Committee was raised by the Italian amendment concerning State monopolies. The view taken by the Sub-Committee was that, although there was no doubt that the institution of State monopolies might permit a State to take reasonable precautions to justify measure which in certain cases might be stricter than those affecting goods *not* the subject of a State monopoly, it was none the less impossible to go the whole way with the Italian Delegation, and allow a State to prevent or hinder the transit of goods simply because these are the subject of a State monopoly. This amendment was rejected by the Sub-Committee. But in order to give as much satisfaction as possible to the Italian Delegation, and also to show that it was recognised that the existence of State monopolies did justify the taking of special measures, the Sub-Committee added to the second paragraph of Article 5, after the words *persons, luggage, goods*, the words *particularly monopolised goods*.

A third question was also discussed at some length. The Conference will remember that the French Delegation proposed to add a paragraph at the end of the article in the following terms : *This provision shall not apply whenever transit is carried out by vessels proceeding by waterway under customs seal*. The French Delegation had declared in Committee its intention not to insist upon the inclusion of this clause in the Convention, but requested that it should appear in the Final Protocol. But although this request was not made by any other delegations, certain of them asked for the inclusion of other similar provisions,—in particular, the Czecho-Slovak and Uruguayan Delegation.

tions, the latter indeed, submitting a considerably longer amendment. After having discussed the question at great length, the Sub-Committee unanimously decided that greater freedom ought to be allowed on international waterways than anywhere else, and accordingly it was inclined to advocate the principle contained in the French and also in the Czecho-Slovak and Uruguayan amendments. The possibility of adopting the following text was even seriously considered : *whenever transit is carried out by vessels proceeding under customs seal... unless when there is serious cause to suspect fraud or contravention*. Whilst in complete agreement, however, upon the principle itself, the Sub-Committee was unanimously against including such a provision in Article 5 of the Convention on Freedom of Transit. There were, in fact, insuperable difficulties in the way of defining in this Convention the exact significance of the words *international waterways*, and the Sub-Committee found itself on the horns of a dilemma;—should the question be referred to a Convention as yet unknown, or should some vague formula be adopted such as *waterways falling under international treaties*. The Sub-Committee decided that, although complete agreement had been reached upon the principle, the question should not be taken up until the discussion of the Convention on the International Régime of Waterways.

The above constituted the three principal questions which formed the subject of alterations in the text before the Committee. In the course of debate one or two explanations were requested, and it was agreed that they should be mentioned before the plenary Committee. In the first place, there was the question of emigrants in transit, in connection with which the Sub-Committee adopted the text of the English amendment which entitles the High Contracting Parties *to ensure... that passengers in transit are in a position to complete their journey*. Whilst retaining this wording, the Sub-Committee was perfectly cognisant of the fact that the clause had only to be misinterpreted in order to become in practice a hindrance to the transit of emigrants, and accordingly it was considered desirable that the Conference should express a wish for the clause to be applied in the spirit, namely, that such necessary and reasonable precautions should be allowed as would not add to the difficulties of emigration traffic.

There is also the question of the addition of the word *morals*, which was proposed by the British Delegation. It was decided that the circumstances which it had in view were covered by the words *public health or security*, and that the addition of the word *morals* was therefore uncalled for.

For the purpose of bringing the French text into line with the English, the words *dans l'un et l'autre cas* were also omitted.

Lastly, the Sub-Committee studied the question whether the terms of the Convention forbade the transit of counterfeit coin, or at least did not permit this. No one doubted for a moment the intention of the Convention, and it was considered that the words *public security* fully sufficed for the purpose.

In connection with conventions regarding fisheries produce, it was pointed out that reference might with advantage be made to the interpretation of the word *transit* to be found in the commentary on Article 1 contained in the *Green Book* (1).

M. VALLOTTON (Switzerland; speaking in French).—I have the honour to propose that in order to avoid any misunderstanding, the words *plurilateral conventions* should be substituted for the word *those* in line 8 of paragraph 3, which would then read as follows : *arms or the produce of fisheries, or plurilateral conventions concluded...* The word *those* is not quite clear; it might give the impression that the word *goods* in the line above is the one referred to. M. Serruys is in agreement with me as regards this change, which will not, I think, occasion any difficulty.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I think it would be a vast improvement in the text.

M. VALLOTTON (Switzerland; speaking in French). — I would like to make another observation with regard to this article. If there is a general desire to include the words *particularly monopolised goods*, then the Swiss Delegation will not destroy

(1) See p. 286.

this unanimity by raising any opposition. I would, however, repeat the observation which our delegation took the liberty of making in the Sub-Committee. In the first place, from the legal point of view we are not quite clear as to why a distinction should be made in practice for goods which are the subject of a monopoly. It is a question of the relations existing between States, and we have not to deal here with any measures which a State may take within its own territory. Personally, I very much regret that the Italian Delegation should have insisted on pressing their amendment, which is such as to detract from the liberal tendency of the article. With regard to the clearness of the text, may I point out to the Drafting Committee, without laying any special stress on the point, that the addition of the words *particularly monopolised goods* does not in reality add anything to the text, because the words *vessels, coaching and goods stock...* appear to be included also under the term *particularly*. May I be allowed to proffer this observation with all respect to the Officers of the Conference, as it is they who are responsible for the wording.

M. BIGNAMI (Italy; speaking in French). — In reply to M. Vallotton's remarks, I ought to make it clear that the Italian Delegation continues to urge the adoption of the text which M. Haas, as Rapporteur of the Sub-Committee, has just read. In accepting the words *monopolised goods*, Italy has already made no small concession, and she is absolutely unable to abandon her view on the subject. Indeed, were this phrase to be omitted from the article, Italy would make a reservation with regard to accepting the latter.

THE CHAIRMAN (speaking in French). — We have here a draft which is in the nature of a compromise, and upon which we can all, I think, agree; I am sure that even M. Vallotton will not press his point further.

M. CARACOSTEA (Roumania; speaking in French). — I should like to make it known that there is complete agreement between the Italian and Roumanian Delegations on this subject. The words in question must not be omitted from the French amendment in the form which has been read to us. May I be permitted to give you an example which will demonstrate to you the absolute necessity of including the words.

THE CHAIRMAN (speaking in French). — I think that as the Conference seems to be unanimous on the subject, we could end the discussion at this point.

M. POLITIS (Greece; speaking in French). — We do not understand, and I therefore request that the example be given us.

M. CARACOSTEA (Roumania; speaking in French). — A few months ago there arrived in Roumania seven or eight truckloads of tobacco coming from Bulgaria and passing in transit through Roumania on their way to Poland. These seven trucks were duly registered at the Customs on their entry into the country, but when they came to leave the country, there were only five of them. I was asked to produce the two trucks; I instituted a search and I found them,—empty. The tobacco had been stolen and sold, and, as Goods Manager of the Roumanian Railways, I was obliged not only to pay compensation to the sender, but also to indemnify the holders of the monopoly for the loss sustained by them from the sale of the tobacco in Roumania. As a result of this incident, I decided that in future every truck containing goods which were the subject of a monopoly should have police escort during its transit through the country. It was said:—"There is a considerable distance between the two frontiers; armies of officials will be needed, to act in relays, and the expense will be very great. Who is going to pay,—the holder of the monopoly, or the State through which the transit takes place? Whichever it be, you will put a stop to all transit". My reply was that when the State was once bound to take precautions to protect goods over which it exercised a monopoly, there could be no question of an obstacle to transit. In the circumstances I associate myself entirely with the view taken by the Italian and French Delegations.

M. POLITIS (Greece; speaking in French). — The example given us by M. Caracostea in order to justify the amendment does not seem to me a conclusive one. Suppose that instead of truck-loads of tobacco, which might bring in some twenty thousand francs to the Roumanian Government, it were a question of seven truck loads of lace, which is not subject to a monopoly, and which, instead of bringing in twenty thousand francs in virtue of the monopoly, could increase the customs revenue by five hundred thousand francs, what would then be the position?

M. PIERRARD (Belgium; speaking in French). — If I understand M. Vallotton aright, his chief object in recommending the words *plurilateral conventions* to take the place of the word *those*, was to make the text clearer. Why did he omit bilateral conventions? Did he consider that in the circumstances two States were not enough to bring into play the provisions of the Convention? *Plurilateral* can signify two plus one. May I ask M. Vallotton whether he does not feel disposed to substitute *general* for *plurilateral*?

M. VALLOTTON (Switzerland; speaking in French). — We agree.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — In South America there are certain inter-State conventions which impose restrictions with regard to matters affecting public health, literary and artistic property, failure to declare the commercial origin of goods, etc. As these conventions are signed by certain countries only, should they be regarded as general conventions? It would be well to arrive at an understanding on this point. M. Vallotton's proposal appeared to us the more logical one, because the word *plurilateral* definitely refers to these kinds of conventions, of which I may cite as an example the Health Convention of Monte Video between Brazil, Argentine, Paraguay and Uruguay, which includes a number of restrictions on goods traffic by sea.

M. HAAS (Secretary-General; speaking in French). — I think we could use the word *general*. As regards the question raised by M. Fernandez y Medina, he will find all he wants in Article 10. Such would appear to be the line which it is necessary for the Convention to follow in order to be able to take geographical factors into consideration.

M. SERRUYS (France; speaking in French). — This is no longer a simple question of distinction between two shades of meaning, but a question of terminology. When we recently drew up the various treaties of peace, we took much trouble to distinguish between bilateral conventions on the one hand, and plurilateral ones on the other. General conventions fall under a rather different category, not only because they are wider, but also because when a convention proclaims itself "general" it usually contains an article stating that it will remain open for signature by other Powers. We are not prepared to make a distinction in this paragraph between conventions which are strictly speaking plurilateral, and general conventions, and I therefore propose that we adopt the word *plurilateral* which M. Vallotton has suggested. It seems to me by far the most correct term technically.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — General conventions also are included.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I quite agree as to the desirability of making a distinction of this kind between the words *general* and *plurilateral*, and it is for this reason that I prefer the word *general*. We have, I think, had in our minds during the discussion conventions which, it is true, were not universal, but which might become so if certain States acceded to them. I would beg M. Serruys not to insist upon a change in the text, because I think that if we use the word *plurilateral*, we may involve ourselves in a difficulty. May I ask M. Vallotton to accept the word *general*?

M. SERRUYS (France; speaking in French). — In order to arrive at an agreement, I propose the following text : *plurilateral conventions bearing a general character, which will give satisfaction to all.*

M. VALLOTTON (Switzerland; speaking in French) and Sir Hubert LLEWELLYN SMITH (Great Britain). — We agree.

M. HAAS (Secretary-General; speaking in French). — The expression *plurilateral conventions bearing a general character* may possibly have the merit of uniting us all in agreement, but its meaning is very vague. What constitutes the “general character” of a convention? Is it the fact that any State may become a party to it if it wishes?

M. SERRUYS (France; speaking in French). — Yes.

M. HAAS (Secretary-General; speaking in French). — Is it a question of the nature of the subject treated?

M. SERRUYS (France; speaking in French). — No.

M. HAAS (Secretary-General; speaking in French). — It is difficult to define the exact meaning. When dealing with such a difficult question, it is a pity to increase the difficulty of it; and besides, the real question—the one raised by the Uruguayan Delegate—finds its answer in Article 10. At the moment we may be said to be dealing with that part of the Convention which has a universal application; it is Article 10 which treats of the possibility of adapting it to various regional and local uses. The text itself clearly shows that the Sub-Committee intended to refer to general international conventions. It is not for me to intervene in the discussion, but I should like to point out that in the Sub-Committee the question did not even arise, and the only conventions contemplated were general international conventions.

M. SERRUYS (France; speaking in French). — As sometimes happens, my explanation has but served to add confusion. We are all agreed that the text should refer to plurilateral conventions, but not necessarily conventions remaining open for signature. In order to make the point perfectly clear, I should like to say that the conventions referred to are those of Paris, Berne, Madrid and Washington. As this statement will appear in the records of the meeting, there can be no longer any doubt as to the meaning of the article.

Sir Hubert LLEWELLYN SMITH (Great Britain). — It should also refer to the North Sea Fisheries Conventions.

M. SERRUYS (France; speaking in French). — Those are referred to in the preceding sentence. At the moment we are dealing with *those concluded with a view to preventing the infringement of the rights of industrial, literary or artistic property, false marks, false indications of origin, or other methods of unfair commerce*, whilst the preceding paragraph deals with conventions on the transit of fisheries produce.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I do not agree. These may be the only conventions at present in existence, but there may be other ones in the future.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — After hearing this explanation, I accept the ruling of Article 10 on this subject.

THE CHAIRMAN (speaking in French). — M. Serruys' remarks will appear in the records.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Whatever be decided, is it clearly understood that the text will be subjected to revision by the Drafting Committee?

THE CHAIRMAN (speaking in French). — Certainly, but you do not oppose the course suggested, together with a note in the records?

Sir Hubert LLEWELLYN SMITH (Great Britain). — Not at all.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I vote for Article 5 in its present form on the assumption that the words *reasonable precautions* include the right of every State, if it thinks necessary, to cause goods in transit to be escorted by a customs official, the expense to be charged to the sender. Our customs regulations accord this right, and I am anxious to make this declaration after hearing the example cited by the Roumanian Delegate, which might lead to the belief that the right of customs supervision, including the escorting of goods by a special customs official, was not included in the words *reasonable precautions*.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Certainly it is permissible to take any measures which are reasonable.

THE CHAIRMAN (speaking in French). — I think we are now in agreement, and, unless anyone else wishes to speak, I will now put to the vote paragraphs 1, 2 and 3 of Article 5 as amended during the meeting.

Paragraphs 1, 2 and 3 of Article 5 were adopted, 28 voting for.

REPORT OF THE SUB-COMMITTEE ON TOWAGE

THE CHAIRMAN (speaking in French). — M. Winiarski, Polish Delegate and Rapporteur of the Sub-Committee on the question of towage (1), will now speak.

M. WINIARSKI (Poland; Rapporteur; speaking in French). — At the time when the Commission of Enquiry was discussing the Preamble to the Waterways Convention, we agreed that a riparian State should be allowed to retain the right of establishing towage or other haulage services which are subject to a monopoly by the State or by a private concessionnaire, and a passage to this effect was inserted in the Preamble, whilst in the commentary to the general report on the Transit Convention it was stated that free passage should also be allowed to tugs with or without tow. It may happen that a State accedes to the Transit Convention, but not to the Waterways Convention, and wishes to take advantage of the commentary (2). It was decided by the Polish Delegation to omit from the text of the Transit Convention anything which might in any way prejudice the question of the establishment of any form of haulage service carried on as a monopoly, and the following clause was agreed upon in committee :

The question as to whether and in what conditions such services may be established is outside the scope of the present Convention.

Certain delegations, however, expressed a fear lest a State should, under the pretext of establishing a traction service to be carried on as a monopoly, hinder transit or come near to preventing it altogether, and it is for this reason that we have added the following passage :

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the free transit of vessels.

(1) See p. 51.

(2) See p. 287.

After the drafting of these two paragraphs, the representative of Germany very rightly called attention to the fact that we had begun with a negative provision and ended with a positive one, and accordingly we changed the order of the paragraphs, inserting immediately before the paragraph which I have just read, the following one :

The question as to whether and in what conditions such services may be established is outside the scope of the present Convention.

I will give a few examples of the various difficulties which came to light in the Sub-Committee. A is a State situated on the lower course of a waterway. It sends barges, accompanied by a tug in transit, through State B, which is the middle course, into State C, which is situated on the upper course. The tug leaves its barges with C and goes home light to A. Is it permitted to pick up a barge from a port situated in B in order to tow it to another port, belonging to the same State, which lies on its route? Here is a second example : A, the State downstream, sends a tug towing barges in transit, through the territory of B, upstream to C. The tug may be obliged to leave some of the barges in the country through which it passes; the original tug may be too big and may need replacing by a smaller one; is a State entitled to keep depots for tugs in the territory of the State through which the transit takes place? The view taken by the Sub-Committee was that such contingencies might occur, and that if they did, the question should not in any way be prejudged by the Transit Convention, and, accordingly, it is proposed simply to make the following note in the records of the meeting :

In virtue of the Convention on Freedom of Transit, a State is not bound (a) to allow a tug which is passing through a country light to undertake towage between places situated within one and the same State; (b) to allow within its territory the establishment of a foreign towage service working between places situated within its frontiers, with the object of providing running facilities for foreign vessels.

The above may be permitted in virtue of other conventions, but a State is not bound to admit them in virtue of the Convention on Transit.

THE CHAIRMAN (speaking in French). — I would thank M. Winiarski for his very lucid report and also for the very clear illustrations he has given.

M. VALLOTTON (Switzerland; speaking in French). -- It is unfortunate that we did not receive the draft in time to be able to give a verdict on it now. At first sight, it would appear acceptable, on the understanding that acquired rights of freedom for towage over international waterways are expressly reserved. There must be no ambiguity on this point. I beg we may be accorded time until this afternoon in order to study the article.

THE CHAIRMAN (speaking in French). --- Certainly.

M. KROLLER (Netherlands; speaking in French). — We have a certain number of observations to make on this subject. Everyone must be on an equal footing; there must not be a different set of weights and measures for the foreigner and for the national.

THE CHAIRMAN (speaking in French). — The proposed text reads as follows :

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the free transit of vessels.

M. KROLLER (Netherlands; speaking in French). — I propose the addition of the words *on a footing equality* to follow the words *the free transit*.

M. SEELIGER (Germany; speaking in French). — These words should not be added to a negative sentence, but to some phrase which indicates in a positive manner that these services must be established on a footing of perfect equality.

THE CHAIRMAN (speaking in French). — It is a question of drafting.

M. WINIARSKI (Poland; speaking in French). — We have admitted this principle in the Transit Convention, and I am not opposed to it, but I do not think it could be inserted here without giving rise to the idea that in all the other articles where it is not expressly mentioned, it is not to be understood as applying.

THE CHAIRMAN (speaking in French). — Once an agreement has been reached between M. Kroller and M. Winiarski, the text can be voted upon at the beginning of this afternoon's meeting.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The Serb-Croat-Slovene Delegation has made certain reservations, and it would therefore be well if an agreement could be arrived at with M. Kroller and M. Winiarski to submit their draft to us before the vote is taken.

THE CHAIRMAN (speaking in French). — Will M. Winiarski and M. Kroller kindly examine the question with M. Avramovitch (1)?

DISCUSSION OF ARTICLE 13

Article 13 now comes under discussion. The Roumanian Delegation has proposed the following amendments :

ARTICLE 13. — Omit the words in the title *In favour of the devastated regions*, and add the following sentence to the text :

It is likewise understood that, particularly on routes where the means of transport form the subject of a monopoly, transit shall be restricted to the capacity for traffic existing at the time, priority being accorded to internal, export and import traffic.

M. CARACOSTEA (Roumania; speaking in French). — The Roumanian Delegation has proposed the amendment which you have just heard, and I will now give the reasons which led us to ask for its adoption. It has been said that this is not the place to discuss it, but I should like to know where we are to discuss it if not here and now. In our own country,—and I think this is the usual procedure in countries which are purely agricultural,—the transport of cereals begins about the month of October, and it is absolutely essential that the transport of these cereals to the important ports of Braila and Galatz should be concluded before December 15th, for the reason that at that date the Danube freezes and navigation can no longer be carried on. It follows, therefore, that the complete cereal produce of Roumania must be dispatched via the Danube during these two or three months. Suppose that during this period, a neighbouring State came and said to us : “We wish to carry out transit traffic to your ports of Braila and Galatz during this season of the year, for the Danube freezes for us as well”—I ask you what attitude we should take up in the circumstances? You are well aware that at the present time the means of transport at our disposal are very limited. To which are we to give the more favourable treatment—to our own export traffic or to transit traffic? Please do not imagine that I wish to prejudice transit traffic in any way,—I shall be bound by the Convention which we are now drawing up,—but let me assure you that I think it most unlikely that my Government could rid itself of the obligations which it is under to transport its own cereal harvest. Whilst all of us here are determined to hold to the engagements into which we are about to enter, we are bound in the first place to consider our own interests. We shall make every effort to satisfy the demands of transit, but we cannot do this until our own interests are safeguarded. It is for these reasons that I beg the Conference to adopt the amendment put forward by the Roumanian Delegation.

(1) For remainder of discussion see p. 142.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French).—The Serbian Delegation supports the Roumanian proposal. In our country the necessity is even greater than in Roumania of ensuring that the bulk of the transport be carried out during the autumn months. We have to dispatch quantities of earlies, fruit and cereals, of which certain parts of the country produce large quantities, whilst others, such as Dalmatia and Montenegro, do not produce any at all, and it is therefore necessary to stock them before the freezing of the Danube. I may add that we have not many railways, and that they are in very poor condition. The above are the facts which lead us to support the Roumanian proposal. By failing to do so, we should run the risk of safeguarding our neighbours' transit traffic, whilst unable to supply some parts of our own country with the products which are essential to their existence.

M. LANKAS (Czecho-Slovakia; speaking in French). — I am extremely sorry not to be able to support the Roumanian proposal. The amendment appears to me both exceedingly dangerous and also in contradiction with one of the fundamental principles of the Convention. As the Greek Delegate reminded us this morning, two principles are involved,—freedom of transit and equality. The word *equality*, as I understand it, includes not only equality between States which are third parties, but also equality between my own traffic and any transit traffic which I may undertake. May I note in passing that during the last few years the same railway situation has prevailed in other countries, in regard to transit traffic, as that which prevails in Roumania. The railway administration of the Czecho-Slovak Republic has always considered itself under an obligation to treat transit traffic in the same way as it treats its own traffic, and it is in pursuance of this principle that it demanded equal treatment for traffic crossing Germany, for instance.

It is true that there are sometimes considerable technical difficulties in the way of assuring such transport, but I think we must really exclude the possibility of inserting in the Convention itself, as a principle, that the carrying out of transport, and the application of the principle of freedom of transit should be dependent upon something so vague as the momentary capacity of the country of transit. In my opinion, the Convention on Freedom of Transit should take as its motto the words *Ad impossibilia nemo tenetur*. I cannot admit the possibility of embodying in the Convention a provision such as that proposed, and therefore I cannot, to my profound regret, see my way to support the Roumanian motion.

THE CHAIRMAN (speaking in French). — Will the Conference allow me to make a small observation on this subject? We read in the *Green Book* (1) : *Nothing in the Convention obliges a State to give transit traffic general priority over interior traffic*. Would not the simplest way be to insert that passage in the records of the meeting? Would not the Roumanian Delegation then agree that there is no necessity for any further statement?

M. PIERRARD (Belgium; speaking in French). — The Belgian Delegation cannot but cordially second M. Lankas' words, directed as they were towards the protection of freedom and equality for traffic in transit. If every country is given authority to establish in its own interest measures absolutely contrary to the principle of freedom of transit, I think it will be the death-blow of the Convention, especially since the provisions which we are at present engaged in drawing up exempt the different States from taking the necessary measures to improve their routes of communication, when these are inadequate. There is no shortage of means of transport in my country, although the conditions are naturally less favourable than they were before the war, and occasionally a crisis arises. I might, for example, mention the beetroot season. If we were accorded the right of putting a stop to all transit on the pretext that it was the season for transporting the beetroot crop, transit would no longer exist except in name.

The Chairman has just said that under the terms of the *Green Book*, Contracting States are not obliged to accord priority to transit traffic. Obviously they are not; if

(1) See p. 284.

they were, it would be contrary to that equality which should be maintained between transit traffic and internal traffic, but if priority were accorded to internal traffic over transit traffic, that would likewise constitute an infraction of the principle of equality at which we are aiming. It is for these reasons that the Belgian Delegation is reluctantly compelled to deny its support to the Serbo-Roumanian proposal.

M. HOLCK-COLDING (Denmark; speaking in French). — I will not do more than remind the Conference of the terms of Article 5 of the Berne Convention, which reads as follows :

Goods shall be dispatched in the order in which they have been accepted for transport unless the railway can establish a valid objection connected with the working needs of the line or with the public interest.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I have no wish to prolong the discussion; I would only like to ask the Roumanian Delegate to accept the Chairman's proposal to insert in the records a passage which will show clearly,—and a declaration to this effect has already been made in the *Green Book*,—that there is nothing in this Convention to force a State to do what is impossible, and, in particular, that the Convention contains nothing which will oblige a State to give transit traffic general priority over internal traffic. I am unable to see the wisdom of embodying in the Convention so strict a form of words as that advanced by the Roumanian Delegation, which prescribes in so many words that internal traffic, including import and export traffic, shall have priority over transit. The British Delegation would be unable to agree, since it is obvious that there must be a distinction according to the different classes of goods carried. There might be on the one hand transit traffic comprising goods of vital necessity for a country, and, on the other hand, goods intended for domestic consumption, which are only luxuries. Are we to stipulate that luxury goods intended for domestic consumption shall have priority over goods which are a vital need? Possibly it will not be easy to find a suitable form of words for incorporation in the Convention itself, and for this reason I am inclined to advocate the method suggested by the Chairman, namely, the insertion of a sentence in the records. I hope that the Roumanian Delegation will see its way to accept this proposal.

M. WINIARSKI (Poland; speaking in French). — No one is bound by the impossible. Everyone understands that in the face of material obstacles arising from damage to or destruction of railroads and bridges, or from shortage of rolling-stock or fuel, the provisions of this Convention cannot be carried out in their entirety;—in a previous article, indeed, we provided for certain restrictions on freedom and equality of transit. As interpreted by the Polish Delegation, there is nothing in the Convention to prevent priority being given in certain cases to local traffic to the prejudice of transit traffic, but I could not accept a form of words which simply specified that there was no obligation to accord priority to transit as opposed to local traffic. In common with the Roumanian Delegation, I referred to traffic which is of primary importance, and I repeat that there is nothing in the Convention to prevent such traffic having the priority in cases of absolute necessity, but as the question has already been raised by the Roumanian Delegation, with a request that there should be a definite proviso to that effect, I cannot do other than second the amendment.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The Serbian and Roumanian Delegations are very far from desiring in any way to infringe the principle of freedom and equality for transit. In the course of discussion, we have many times heard invoked the ideals of equality and of freedom, and the vital interests of a country. To speak quite plainly, all that we propose to do is to light upon a form of words which will give satisfaction to all, which may be applied by all and of which no-one can complain. What needs can be more vital than those of a region which is threatened with famine?

M. LANKAS (Czecho-Slovakia; speaking in French). — Famine constitutes the *emergency* mentioned in Article 7.

M. AVRAMOVITCH (Serb-Croat-Slovene State). — Exactly so, and it is noticeable that all the countries which demand absolute freedom and equality in transit are countries which not only produce goods intended for transit traffic, but which do not run the risk of being driven to search for food for hungry mouths. As in Roumania, so in Serbia, there is yet another difficulty,—the impossibility at certain seasons of undertaking, either by rail or waterway, the transport necessary to give satisfaction to the most urgent needs of certain parts of the country. Products may sustain considerable loss whilst in process of transport, and it is essential, therefore, that they should be carried during the proper season. The vital interests of the country are dependent upon it. We are told that the Preamble grants to one and all freedom to do as they wish. It would appear to me fairer to adopt a text calculated to give satisfaction to one and all. In order that a compromise may be reached, and if the Roumanian Delegation agrees, perhaps it will be possible informally to come upon a wording which would also give satisfaction to the delegations holding the opposite view. Surely the Conference, before arriving at a decision, should take into due consideration the interests of the countries to which I have made allusion.

M. REINHARDT (Austria; speaking in French). — The conditions obtaining in Austria go far towards justifying the proposed amendment to Article 13, but, in my opinion, there is a danger lest the restriction which it involves should be more or less detrimental to the principle of freedom of transit, and, therefore, although I stand here as the representative of a country which is a prey to difficulties of every sort, yet, in order to reconcile the needs of domestic traffic with those of transit, and to safeguard the principle of freedom of transit, I will consent not to support the reservation contained in this amendment.

THE CHAIRMAN (speaking in French). — With the object of meeting the views which we have just heard, we will now appoint a sub-committee.

M. CARACOSTEA (Roumania; speaking in French). — I should like, further, to relate the fact that during October, November and part of December, we are obliged to hire Austrian waggons for the transport of our cereal crop, and when our ports are in such a congested condition owing to the vessels carrying the crop,—it happens sometimes that a thousand trucks arrive in a single day,—we are unable to ensure the passage of any other traffic, and thus, whilst we have no intention of imposing any restrictions on transit traffic, there yet are circumstances which must be considered. We shall do our best to provide facilities for transit, and to arrive at an agreement with the countries concerned, with the object of indicating to them other routes and other ports, but on account of the circumstances which I have described above, my Government cannot bind itself in any way.

THE CHAIRMAN (speaking in French). — The British Delegate has proposed a form of words for inclusion in the records of the meeting, as I had suggested, and I will beg the Roumanian, Serbian, Belgian, Polish and Uruguayan Delegates to meet some time to-day, or during the evening, not as a sub-committee, but simply in order to hold a conversation on the subject of this proposal. May I bring specially to their favourable notice my suggestion, which was seconded by the British Delegate, that an endeavour should be made to find a form of words suitable for inclusion in the records.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If I understand aright, it is proposed that we should meet in order to see whether an agreement cannot be arrived at with regard to a passage to be embodied in the records, whereas I should propose a different course,—first of all an amendment proper, or failing this, a passage in the records.

Sir Hubert LLEWELLYN SMITH (Great Britain). — M. Chairman, since I handed you a draft form of words for inclusion in the records, the Polish Delegate has drawn up a text which seems preferable to my own, and I think we could all agree upon it.

THE CHAIRMAN (speaking in French). — I think it would be well to hear this text before the discussion, and I therefore call upon M. Winiarski, the Polish Delegate, to speak.

M. WINIARSKI (Poland; speaking in French). — As a matter of fact, I have drafted a text, but I should like to say that unless it meets with the approval of my Roumanian and Serbian colleagues, I shall not press it.

Nothing in the Convention on Freedom of Transit shall be understood to imply that internal traffic of vital importance for the country may not be given priority over transit traffic of minor economic importance.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If this includes import and export traffic, I am ready to accept it.

THE CHAIRMAN (speaking in French). — The text will be embodied in the records.

M. CARACOSTEA (Roumania; speaking in French). — I would request that it should appear in the form of an amendment to Article 13 of the Convention.

THE CHAIRMAN (speaking in French). — In these circumstances, it will be well for a fresh conversation to be held between you before the vote is taken (1).

The meeting adjourned at 1.30 p. m.

(1) For remainder of discussion see p. 142.

NINTH MEETING OF THE PLENARY COMMITTEE

(Monday, March 21st, 1921, at 5.30 p.m.)

REPORT OF SUB-COMMITTEE ON ARTICLES 10, 11 AND 12 — TOWAGE — DISCUSSION OF ROUMANIAN PROPOSAL ON PRIORITY FOR INTERNAL TRANSPORT

The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLES 10, 11 AND 12

THE CHAIRMAN (speaking in French). — We are now going to hear the Report of the Sub-Committee which was appointed to prepare the text of Articles 10, 11 and 12. I will read you the text of these articles as unanimously proposed by the Sub-Committee, and I will then call upon the Rapporteur, Sir Hubert Llewellyn Smith, to speak.

ARTICLE 10 (in substitution for Articles 10 and 11). — Subject to the provisions of Article 19 of the Covenant, the Conventions, Agreements, and Treaties concluded between the Contracting States, in regard to Transit, before the... 1921, remain in force.

In pursuance of the above provision the Contracting States undertake, either at the expiration of these agreements or as soon as circumstances permit, to introduce into any agreements thus maintained in force, which may conflict with the terms of the present Convention, such amendments as may be necessary to bring these agreements into harmony with its terms, so far as the geographical, economic, or technical conditions in the countries or regions, which are the subject of these agreements, allow of this being done.

The Contracting States further undertake not to conclude any conventions, treaties or agreements in future which might conflict with the terms of the present Convention, unless it can be shown that there are geographical, economic or technical reasons which might, in exceptional cases, justify a departure from them.

Moreover, the Contracting States will be entitled, when drawing up future agreements, to establish regional understandings regarding transit, in conformity with the spirit of the Convention.

ARTICLE 11 (in substitution for Article 12). — The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of the still greater facilities granted for freedom of transit on the territory situated under the sovereignty or authority of any one of the Contracting States, under conditions compatible with the principles of the present Convention, or, on the other hand, the prohibition of the granting of such further privileges in the future.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — Before I give an account of the work of the Sub-Committee, I should like to mention one or two small drafting amendments which were made in the text at the last moment and are not included in the version which you have just heard. They modify two sentences only. The first paragraph of the new Article 10 should read as follows : *The Conventions, Agreements and Treaties concluded between the Contracting States in regard to Transit before the... 1921 are not abrogated as the result of the present Convention subject to the provisions of Article 19 of the Covenant.* The words *are not abrogated* take the place of the words *remain in force*, and the order of the sentence *subject to the provisions of Article 19 of the Covenant* has been changed.

Paragraphs 2 and 3 are not affected.

Paragraph 4 should read as follows : *Furthermore, Contracting States may, in matters of transit, enter into regional understandings in conformity with the spirit of this Convention.* The words *when drawing up future agreements* have been omitted, the words

to conclude have been substituted for the words *to establish*, and the words *the principles* for the words *the spirit*.

I am inclined to think that the task entrusted to the Sub-Committee which has just ended its work is amongst the most difficult and delicate of any which has been undertaken since the Conference began. It is only owing to the conciliatory spirit evinced by one and all that it has been possible to produce a text upon which there could be unanimous agreement. This text is necessarily a compromise, and a compromise cannot give satisfaction to all. All I can say is that we have done our best to take into consideration the various opinions which have been expressed upon the subject, and I therefore hope that the Conference will be able to accept the text upon which we have agreed.

At the very outset of our labours it was evident that there was a clear contradiction between two different schools of thought,—that in favour of maintaining all existing conventions, and that in favour of abrogating them; but as we pursued our enquiry it became clear that the conflict of views was far less acute than had at first appeared. On the one side the three following exceptions were admitted by those who proposed to abrogate all conventions and to substitute for them those wider conventions upon which we are now engaged :—firstly, conventions concluded with non-contracting States cannot be abrogated. This in itself constitutes an important exception. Secondly, a reservation must be made with regard to certain existing conventions concluded between the Contracting States. Incidentally the *Green Book* draft of the article expressly lays down that certain among them may be kept in force. Lastly, the draft which we had before us provided that, even as regards conventions in the future, there might be exceptions founded upon *a combination of economic, topographical and technical considerations*. On the other side, those who proposed the maintenance of all existing conventions declared their willingness to concede that, as and when the opportunity should occur, either by the expiration of the validity of a convention, or of the period for revision, or by any other means which might offer, it should be the duty of the Contracting States, so far as economic, topographical and technical conditions warranted, to endeavour to harmonise such conventions with the terms of the Transit Convention.

After careful consideration of the question, we came to the unanimous conclusion that it was desirable to proceed on the basis of the latter rather than the former view, namely, on the principle that the Transit Convention should not *ipso facto* abrogate existing conventions, but that it should be the duty of Contracting States to utilise every opportunity that occurred of harmonising their previous obligations with the terms of the present Convention. In arriving at that conclusion we were actuated by our conviction that by adopting the other system we should be faced with a formidable list of conventions to be kept in force, and that if we thus strengthened the maintenance of these conventions, the Transit Convention would come into force without there being any obligation binding the parties concerned gradually to bring the provisions of the conventions thus maintained in force into accord with the terms of the present Convention.

We were also influenced by the fact that, whilst the procedure which we advocated, and which is embodied in our text, applies equally to conventions between Contracting States and those concluded with non-contracting States, it is absolutely impossible to apply the principle of abrogating conventions (with the natural exception of the conventions maintained in force), to any conventions other than those falling under the first of the two headings to which I have just referred.

I ought to mention—and this is a point to which the Italian Delegate attaches importance—that it is not to be understood that one only of the Contracting Parties is at liberty to abrogate a convention, but rather that, as soon as an opportunity for revision occurs, it is incumbent upon any Contracting State which is a party to such a convention to enter into negotiations with a view to bringing the provisions of that convention into harmony with those of the present one.

With regard to future agreements I shall have fewer observations to make, because I think it was evident from the general discussion in Committee that there was not any acute difference of opinion on the subject. As regards the future, no less than the past, we propose that there shall be the possibility of exceptions based upon eco-

onomic, topographical or technical considerations, but that, subject to such exceptions which, as you will observe, allow recourse to the jurisdiction of the League of Nations, the Contracting States should undertake not to conclude any conventions, treaties or agreements which might conflict with the terms of the present Transit Convention. There follows a sentence inserted in order to give the elasticity necessary for the conclusion of regional transport agreements which, although consistent with the principles of this Convention, might perhaps go a little further. There may exist, between neighbouring States which are not in the strictest sense contiguous, mutual arrangements, admitting of certain formalities in favour of each other, or the mutual recognition of customs seals, or other measures, either administrative or even outside the sphere of administrative measures. It is obviously not desirable to prohibit the conclusion of such agreements, but they need special mention in this clause in order to prevent their legitimacy being called in question. I may add that it was particularly in order to accord satisfaction to the desires of some of the South American States that this particular provision was inserted.

As regards the former Article 12, which dealt with greater facilities, we decided, after considerable discussion, to retain this article, making it, however, slightly more elastic than it is in the printed text of the *Green Book*. Instead of the hard and fast words *under conditions compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties*, we suggest the words *under conditions compatible with the principles of the present Convention*.

I now come to the Preamble, which was also submitted to our Sub-Committee. We were of opinion that it was only referred to us in so far as it was connected with the other questions under examination, namely, the draft amendments to the Preamble suggested in order to determine the relations between the Transit Convention on the one hand, and future and existing conventions on the other. We consider that, should our draft of Articles 10 and 11 be adopted by the Conference, there will be no need to make any reference to this matter in the Preamble. I warn the Conference that we have not dealt with the amendments to the Preamble connected with other matters,—for instance the Austrian, Chilian and French amendments, and perhaps one or two more which escape me and which are chiefly concerned with matters of form. The Sub-Committee was of opinion that its task did not include the study of such questions, and it is for the Conference to decide whether they shall be referred to another sub-committee, or to the Drafting Committee.

There is yet another point. There are a certain number of further proposed reservations, which may be called geographical reservations rather than conventional ones. There is one put forward jointly by the French and Portuguese Delegations; there is another proposed by the representative of India, and I myself, although I did not, strictly speaking, put forward an amendment, had occasion to mention to the Sub-Committee that it would certainly be necessary for some declaration to be inserted, either in the Convention or in the Protocol, for the purpose of adjusting the application of the Convention to the special conditions obtaining in the colonial possessions of certain States, in particular in the Colonies and Dominions of the British Empire. We came to the conclusion—and I am authorised by the Sub-Committee to suggest to the Conference—that any reservations which might still appear necessary after the adoption of Articles 10 and 11 as proposed by us might very well be embodied in the Final Protocol instead of in the Convention. But we are of opinion that, as a result of our decision that existing conventions shall not automatically be abrogated, it may be possible to reduce still further the number of these geographical reservations.

THE CHAIRMAN (speaking in French). — I have to thank Sir Hubert Llewellyn Smith, the British Delegate, for his very excellent statement, by means of which we have had borne in upon us the utility of referring matters of this kind to consideration by a sub-committee. I consider that the conciliatory spirit manifested by this Sub-Committee does honour not only to the Conference but also to the League of Nations.

M. SERRUYS (France; speaking in French). — It is a very pleasant duty for me to have to thank our Rapporteur, not only for the statement which he has just made on an exceptionally complex matter, but also for the laborious work which he under-

took in the Sub-Committee, and especially for the spirit in which he carried it through. The result arrived at is similar to that which I outlined before the Committee at some length when reviewing the situation on Friday afternoon.

The agreement which has just been reached on the subject of Article 10 is the best possible guarantee of the spirit of conciliation and practical achievement which animates this Conference, but if we have arrived at this result it is in a large measure owing to the determination and clear-sightedness of our Rapporteur. I am, I think, voicing the feelings of all of us in tendering him our hearty thanks.

M. ALVAREZ (Chile; speaking in French). — I only rise to express my thanks to the Rapporteur for the able manner in which he has presided over the meetings of our Sub-Committee. The proposal on the subject of Article 10 which is now before the assembly gives the greatest satisfaction to the Chilean Delegation, which concurs heartily in the agreement reached.

M. MATSUDA (Japan; speaking in French). — I should like, on behalf of the Japanese Delegation, to pay a tribute to the Rapporteur. The efforts of our British colleague, Sir Hubert Llewellyn Smith, as Rapporteur of the Sub-Committee, are worthy of the highest praise. Unfortunately, the Japanese Delegation, which put forward a proposal at the last meeting, cannot accept the principle of the new draft as submitted to the Conference. Japan wishes to maintain the principle of freedom, purely and simply, for all transit, as advocated last time.

The matter must be considered from two points of view,—that of previous treaties and that of future ones. The Japanese view is that when any exception has once been admitted, the fundamental principle suffers, and the object of the Convention is wholly destroyed. It may be said that previous agreements are justified by very special and exceptional circumstances, and that the past is thus approximated to the present, but a meticulous study is needed in order to prove the special circumstances, and if this be not done, I am convinced that many doubtful cases will subsist, for, as you have seen, agreements in the past were not inspired by the same principles as those we are now discussing. The Japanese Delegation holds, therefore, to its original proposition not to allow any exception to the terms of the text, but, if any States consider the maintenance of certain existing treaties to be indispensable, the Japanese Delegation proposes, in order to effect a compromise, to subject these treaties to minute and careful study. With regard to treaties in the future, we think they could without difficulty be drawn up in accordance with the principle of the present Convention.

To sum up, an important exception to the principle having once been admitted, the Convention will have very little or no value.

M. BIGNAMI (Italy; speaking in French). — The solution adopted approximates nearly to that proposed by Italy, taking as it does the form of a distinction between the past and the future. By accepting Sir Hubert Llewellyn Smith's text the Italian Delegation has manifested a desire for conciliation. The Delegation notes the declaration to the effect that amongst the Powers which have concluded a Convention with one or more other Powers, none is obliged to abrogate any treaty merely upon the request of a signatory Power, but need only examine the possibility of bringing it into accord with the Convention on Freedom of Transit.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I should like to know whether by the words *Conventions, Agreements and Treaties concluded... in regard to Transit*, it is intended to include certain provisions in treaties which do not deal exclusively with transport questions. Are Health Conventions, Treaties of Peace, or Commercial Treaties, which contain provisions relating to Transit, to be considered as included in this declaration?

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — A convention containing provisions on transit is considered to be a convention relating to transit.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Thank you for your explanation.

THE CHAIRMAN (speaking in French). — Does anyone else wish to speak on the subject of the new draft of Articles 10 and 11?

The Rapporteur will be kind enough to say a few words on the subject of the date left blank in the first paragraph.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I omitted to call the attention of the Conference to the fact that in line 3 of Article 10 there is a date left blank which ought to be filled in. I do not know whether the Conference feels disposed to fix this date now, or to leave it to be filled in by the Drafting Committee when the latter has determined the form which the Convention is to take.

Although our Sub-Committee discussed the subject at some length, I do not think we have any collective proposal to make, and if I make a suggestion, it is simply in my own name. We are all agreed that the date must be one not too far in the future. The date of the coming into force of this Convention is certainly unsuitable, for the reason that a considerable period, which may extend to several months or even to a year or more, sometimes elapses before ratification takes place, and this period could be utilised for the drawing up of new conventions which, by the terms of the present draft, would fall under the heading of "existing conventions", and would therefore be maintained in force. Clearly such a condition of affairs cannot be contemplated. Perhaps April 1st would be rather too early a date, but I suggest that it should be not later than May or June.

I must add that I greatly regret to hear the declaration made by the Japanese Delegate. The Japanese Delegate was a member of our Sub-Committee; he attended its meetings and was entirely in agreement with the decision arrived at, which was referred to a small Drafting Committee to be put into shape. I am sorry to hear that he now wishes to revert to a text the principle of which is entirely different. It may be that I misunderstood his statement, and that it was merely to the effect that he would have preferred the alternative solution, but I was certainly under the impression that he was in agreement. Had I thought that there was an acute divergence of view upon the question of principle, I should not have informed the Conference that the Sub-Committee was unanimous in its conclusion. Perhaps the Japanese Delegate will tell us whether I am right in thinking that, in spite of the statement of his views which he made, he nevertheless supports the general view taken by the Sub-Committee and, I think I may say, by the Conference, and would not oppose the decision upon which we agreed.

M. MATSUDA (Japan; speaking in French). — If I am asked whether the text as now drafted concords with the Japanese proposal, then, much as we regret it, I must reply that it does not. Our proposal is very simple and very clear, and by its terms no exception is admitted. If this view is not confirmed then, in our opinion, every treaty concluded up to the coming into force of this Convention ought to be set down in the text itself. If I were allowed to formulate a proposal in this connection, I should ask that this list be added to the first paragraph of Article 1.

M. SERRUYS (France; speaking in French). — May I briefly explain how the compromise was reached. I will ask our Japanese colleague to follow attentively the short statement I am going to make, which would appear to me fully to meet his difficulty.

Why did the Sub-Committee take up a different point of view from that contained in the *Green Book*? At the beginning there was a conflict between the various views held in the Conference. We speedily came to the conclusion that it was not so much a question of theory as of producing a Convention likely to endure. Looking at the question from the practical side, we discarded the idea of lists as being impracticable, and the principle that the Convention should be a practical one was the sole aim on both sides.

When, following the lines of the *Green Book*, it was laid down that existing treaties should be abrogated wholesale, it was fully understood that this was an entirely theoretical point of view, and that the danger attending the carrying out of such a measure would be considerable; this procedure was accordingly modified without delay by the introduction of the idea of lists. Such was the motive prompting the transition from the realm of theory to that of practice and of history. At the time when the *Green Book* was written, the danger passed unsuspected,—although indeed there were those who did perceive it, and avowed as much to me—but it was necessary to establish a theory, and accordingly a compromise was made. First the obligation was declared to be general, and then the most dangerous form was adopted for the maintenance of treaties,—that of *ne varietur* maintenance of treaties by a body lacking sufficient authority to sanction international conventions. It was first decided that there was to be general abrogation, and then a purely negative proposal was put forward involving the maintenance *ne varietur* of a host of conventions upon which the assembly was not competent to give a verdict and which therefore, it was unable to register.

One thing was said and another done.

We were then faced with the alternative theory. The system of all-round maintenance of treaties also resulted, in many cases, in a negation of the principles of the Convention. Accordingly, we arrived at a compromise based on a practical conception of historical evolution. We said : The conventions shall be maintained; we are not going to throw disorder into a statutory contract which may have cost a country some considerable amount of trouble to establish and which, as far as world-peace is concerned, constitutes a surer guarantee than the modification of certain transport clauses which might occur here and there in the statute. We said : By maintaining conventions in force, we have no wish to perpetuate irrevocably the present state of affairs. We came here in order to accomplish progress, and we want to see that progress accomplished. Side by side with the system of maintenance in force of treaties we introduced a corrective by saying : By reason of this very maintenance, the Contracting Powers undertake, as soon as circumstances permit, to adapt the present system to that ideal at which we are all aiming. May I be permitted to observe to our Japanese colleague that the establishment of lists of treaties to be maintained in force might well prove the negation of certain of our principles, whereas the system of adaptation as proposed constitutes the progressive and logical achievement of our plan. Such at least was the intention of those who, although holding opposite views, yet came to an understanding, and I hope that our Japanese friends, in virtue of their habitual calm philosophy and their steady advance along the road of progress, will be prompt to appreciate the motives by which we were guided.

M. MATSUDA (Japan; speaking in French). — I hope I may be excused for speaking thus often, but there are two things which I should like to explain; the question was referred to a Committee of five or six members who were to meet at five o'clock this afternoon. I was present and made the proposal which I explained just now. It has been necessary for me to say this, in order that the procedure followed might be known.

The second matter which I should like to explain is the following :—if we propose to retain the enumeration in the first paragraph of Article 10, it is because in our opinion the adoption of the text in its present form might lead to doubt as to the meaning, owing to the fact that some of the treaties previously concluded did not follow the principles which we are here laying down, whilst certain of the clauses contained in them may even be in opposition to those principles, and I cannot but consider, therefore, that the best means of avoiding any conflict would be to maintain the system of enumeration. I am no prophet, but I persist in my view that, in the event of our system being rejected, there will always be the risk of disputes arising. I was anxious to explain the situation fully in order to avoid any misunderstanding.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I should like to say at once that in referring to my regret at the attitude of the Japanese Delegate, I was excusing myself for having given to the Conference the impression that the Sub-Committee had been unanimous in its conclusion, rather than giving my own opinion

upon the views expressed by the Japanese Delegate, who is fully entitled to register his dissent from that conclusion. With regard to M. Matsuda's remarks, his account of what happened at the Sub-Committee is perfectly correct except for one small detail, which was perhaps not sufficiently emphasised, namely, that before the small Drafting Committee met and began its task, the plenary Committee had decided that the principles to be embodied in the draft should not be those advocated by the Japanese Delegation,—and, I may say, to some extent by the British Delegation; for I do not wish to conceal from the Conference that it has needed a good deal of concession on the part of the British Delegation to arrive at this compromise. The question of principle was settled, therefore, before the small Drafting Committee entered upon its labours, and all that we intended to do this afternoon was to see whether that Committee had successfully embodied in its draft the principles already agreed upon. I wish to make this quite clear.

If my colleagues concur, I think it will be possible to give some satisfaction to the Japanese Delegate with regard to his very reasonable request that there should be a list of conventions already existing. I do not think it possible to include this list in our Convention, but, although I have not yet consulted my colleagues, I see no objection to stipulating that the Contracting States must undertake to supply the Secretary-General of the League, at the earliest possible moment, with a list of the conventions in which they are interested. The Secretary-General would then prepare a complete list and circulate it among the Contracting States. A procedure of this kind should go some distance towards meeting the views of the Japanese Delegation.

M. SERRUYS (France; speaking in French). — A proposal has just been made to us towards which I should like to make my attitude perfectly clear. The system previously laid down involved the abrogation of existing conventions and the drawing up of a list of the conventions to be maintained in force, whereas the system which has now met with favour consists in the maintenance of existing conventions, together with an undertaking to adapt them; and now a third system is laid before us,—the maintenance of existing conventions, coupled with the drawing up and communication to the Secretariat of a list of conventions which interest particular States. This proposal appears to me unacceptable in two respects. In the first place, if a State wishes to communicate certain conventions, they must be those which that State itself wishes to maintain, and of which it supplies a list for our information. In that case I see no objection. I am quite ready to approve of the Secretary-General's being informed by every State represented of the conventions, which that State wishes to maintain in force, provided this be done for purposes of information and that it does not involve any pledge, and provided also that the conventions in question have been concluded by the State itself, and are not merely conventions passed by other States, in which it may be interested. There is a distinction. A State is to provide a list, not of conventions which interest it concluded between other States, but of conventions which it has actually concluded.

There is another rather subtle point which should be stressed. It is that, if it is considered desirable to know what conventions are maintained in force by a State, the notification must be made for information only, and must not be looked upon as being in any way a condition of the maintenance of such conventions. It must be nothing more than a piece of information with regard to a decision taken, and must not imply anything else. With this reservation I can accept Sir Hubert's view.

THE CHAIRMAN (speaking in French). — Does the Rapporteur agree with M. Serruys' proposal?

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I do, as far as the correction of the language is concerned. By "conventions in which they are interested" I meant conventions to which they were parties. I agree with M. Serruys on that point. I also agree with him that the list of existing conventions should only be circulated for the information of the Contracting States. I think there should not be a list of the conventions which the Contracting States desire should remain in

force, but that there should simply be the statement of fact. I should like to know whether this interpretation meets the views of the Japanese Delegate.

M. SERRUYS (France; speaking in French). — I fully agree.

THE CHAIRMAN (speaking in French). — Is the Rapporteur's proposal satisfactory to M. Matsuda?

M. MATSUDA (Japan; speaking in French). — If I understand my British colleague aright, he is in favour of those States which desire to maintain previous agreements in force informing the Secretary-General of the League of Nations. I agree that the information may be necessary for the purpose of maintaining such treaties in force, and on this understanding I could support Sir Hubert Llewellyn Smith's proposal. If, however, the information is to be subjected to an interpretative examination by the Secretary-General, with a view to ascertaining whether such and such convention is in accord or not with the provisions of the present Convention, then I cannot agree.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — M. Matsuda's proposal is entirely different from my own, and I am afraid we must conclude that my proposal will not meet his difficulty. I had understood him to say that it would tend to prevent misunderstanding if a list of treaties were communicated. I was impressed by this argument, and proposed that a list should be drawn up, not of those treaties which various States may desire to maintain in force, but of treaties actually in force. Each State could then have made what examination of them it pleased, but I did not contemplate their forming the subject of examination on the part of the Secretariat of the League of Nations.

THE CHAIRMAN (speaking in French). — I think that the Conference is now sufficiently clear as to the different views held with regard to this question. Unless anyone else wishes to speak, I propose that we now proceed to vote.

M. SERRUYS (France; speaking in French). — If I understand aright, the idea held by my British colleague is that the submission of a list to the Secretariat-General should be optional, not compulsory.

THE CHAIRMAN (speaking in French). — We will now vote on the text of Articles 10, 11 and 12 as comprised under Articles 10 and 11.

The Articles were adopted by 27 votes to 2.

THE CHAIRMAN (speaking in French). — If the Conference agrees to adopt the proposal made by the Rapporteur to refer the Preamble with the other amendments to the Drafting Committee, that would, I think, be the simplest method, and a decision could thus be arrived at with regard to the Preamble.

This was agreed.

Dr. Simon PLANAS SUAREZ (Venezuela; speaking in French). — Whilst the draft Convention on Transit is under discussion, and particularly when Article 10 has just been adopted, I have the honour to make the following general statement on the legal and conventional régime obtaining in my country.

The liberal tradition and the just and hospitable character of the Venezuelan people have ever found true expression in the principles which inspire their legislation, and in the method governing the practical application of those principles.

Venezuela is not a military Power; her future is guarded only by sentiments of justice, of freedom and of loyalty, and of trust in a mutual respect for sovereign rights. My country occupies both a vast extent of territory and an excellent geographical situation, combined with the inexhaustible wealth of a fertile soil; and for this reason Venezuelan statesmen have never had to care for anything other than the encouragement of the growth of their fatherland through the increased labour of her people.

Their generous spirit is free from every description of prejudice or antagonism, because they have not inherited racial or religious feelings of this kind. The immense territory contained within our frontiers provides space for the wide and legitimate aspirations of a community which is advancing steadily along the broad path of progress towards a high civilisation,—the only goal desired by this young and vigorous nation. We shall always fight valiantly and unyieldingly as we have always fought, to keep, in the international commonwealth of civilisation, that place to which we have attained by conquest and which is our due, nor shall we fail to accord co-operation to other nations, in so far as the special conditions of our country permit. Thus Venezuela has ever answered the call to participate in all those works of progress which characterise modern civilisation, nor has she failed to give her support to every form of progress in the realms of law, or to any other project calculated to promote a more intense and fruitful international life. For we have always taken the view that a people's greatness cannot exist apart from the forward march of the world in general,—though within the limits of the relations established by law between the different branches of organised society. In this way only can every legitimate interest grow and thrive, and the co-operation which should naturally exist in all the spheres of human labour and moral intercourse be established upon the firm basis of increased usefulness to mankind. We cannot and we must not thwart the natural laws governing the expansion of peoples. Any situation which has been artificially created cannot but rest upon uncertainty, and cannot be calculated to produce good results arising from human effort, whether from the isolated labours of one man or from the combined efforts of all; and that truth applies even more when we come to deal with commercial and economic relations, which invariably necessitate special measures in accordance, in every case, with the conditions of each country, and one may even say continent,—its requirements for domestic consumption and the nature of its products—which constitute the foundation necessary for all commercial exchange. Nor must we leave out of consideration the facilities it may possess for developing and stabilising its natural wealth.

This is a question no less complicated than difficult, for the reason that there may be many different aspects of it dependent upon various considerations, such as geographical situation, means of communication, distance between densely populated centres, particular characteristics, customs and needs of different nations,—not to mention many other circumstances bearing more or less directly on a subject which has such a decisive influence on the history of a State.

Our legislation is based upon important national and even continental interests, upon the essential factors for world-wide progress, and the necessities imposed by the daily-increasing development of our international commerce,—all applied in the same spirit of broadmindedness, freedom and altruism, to which we owe the very praiseworthy results already achieved. It is to this unity of effort, of sympathy and of interests, so necessary for the object pursued,—that of extending and strengthening its economic relations with friendly States—that my country owes it that she can to-day boast a state of prosperous commerce and flourishing agriculture, combined with stable economic conditions, all of which not only give constant occasion for increased effort, but also attract considerable foreign capital, which can ever be sure of meeting in Venezuela a warm welcome and an assurance of all necessary guarantees.

Our import tariffs are identical for every country, whether commercial treaties have or have not been concluded with them, whilst goods are exported free of any tax. Legislation in Venezuela has never been prompted by selfish or exclusive principles. Foreigners enjoy in my country the same civil rights as our own subjects, and every flag receives equal treatment in our ports; our customs regulations do not authorise the investigation of the commercial origin of goods which are under examination, and our fiscal measures do not go beyond the requirements occasioned by the vital needs of the country, being confined to such measures as every Government is bound of right to take, so far as they may serve to guarantee public order, maintain social calm and prevent smuggling. Our only transit trade is carried on with Columbia through the ports of Maracaibo and Ciudad Bolivar, and is subject to the same regulations, formalities and procedure—with the exception of customs duties—as goods required by Venezuela for home consumption. Naturally there are certain indispensable

measures which have had to be included in our legislation and in our special regulations for the prevention of fraud, in order to avoid the possibility of goods in transit remaining in the country or returning to it.

Our home waters, whether rivers or sea, are open to the navigation of all countries, via the Orinoco as far as Ciudad Bolivar, and via the Lake of Maracaibo to the port of that name. Outside these limits, for potent reasons which can be easily understood, navigation, including coastal traffic, is confined to vessels which fly the national flag. There are waterways flowing through vast stretches of country not only sparsely populated, but even sometimes entirely uninhabited, where trade is little more than a name, whilst there exist regions where the natural conditions all but forbid any navigation without the aid of very considerable artificial improvements, which are only likely after many long years to give results commensurate with the effort involved in carrying them out. In a word, the commercial needs of the country require that such works should be embarked upon without delay. For international navigation many different kinds of services are required moreover, including the work of supervision, services for ensuring public safety, and the administrative service required for the carrying out of fiscal measures. These would impose upon us liabilities of which we should feel the burden all the heavier for the reason that they would be unnecessary, and it is for this reason that we could not undertake them. Services of this kind, involving the labour necessary for the safeguarding of navigation, cannot be carried out unless they are definitely called for by the needs of trade, and also, naturally, unless there is the expectation that that trade will bring with it compensation in some measure, at least, for the expense involved.

But friendly relations with their neighbours constitute a very special bond between nations owning a common frontier line, and it has always been held by Venezuela that it is incumbent upon her to tighten the bonds of close friendship by which she is attached to her sister Republics of the American Continent. With these Republics we have relations of every kind, and in 1859 a Convention of Commerce and River Navigation was signed between Venezuela and Brazil, whilst it was again Venezuela which took the initiative in negotiations with the Columbian Republic, negotiations which, in a spirit of justice and of realisation of the benefits which would accrue to both parties, were undertaken with a view to concluding a Treaty to regulate navigation on waterways common to both countries, and to deal also with commerce and transit between the two States. It is on similar principles that Venezuela originally signed and is still carrying out the stipulations of treaties of commerce and navigation with various other countries.

As I have already explained, the tradition which has ever inspired Venezuela in her economic relations with other countries is that which has since been expressed in paragraph (e) of Article 23 of the Covenant of the League of Nations, where it is laid down that Members *will make provision to secure and maintain freedom of communications and transit, and equitable treatment for the commerce of all Members of the League*. In our country no distinction is made, the same rights being accorded to foreigners as to nationals. In Article 23 itself, we read that the principle of freedom in all matters appertaining to communications and transit, as also to equitable treatment for commerce, is *subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon*. The aim of this principle of the Covenant would appear to be to leave to Members of the League, by means of *inter se* conventions and domestic legislation, the task of settling the régime for commerce in general, and for communications, transport, transit, etc., and it is precisely in this spirit of respect for the principles of freedom and equity that the various States must treat with each other, whilst not ignoring their own mutual interests and needs.

In conclusion, may I repeat once again that Venezuela has by a series of legislative measures thrown open her rivers and inland waterways without distinction to every flag, navigation being free up to the point where the waterway ceases to be accessible to it; there have been taken into consideration, not only the possibilities of navigation itself, but also those of commercial traffic, whether foreign or Venezuelan, combined with the economic conditions peculiar to the country, and the natural conditions of her waterways. For the purpose of increasing facilities for international trade, there is now under consideration a scheme for the establishment of a free port,

and the work has already been begun. Venezuela is not only careful to keep in force the various treaties of commerce and navigation to which she is a party but is actuated by the wish to enter into any further agreements which may seem expedient in the future, and, with this object in view, the foreign policy of my country will continue to be inspired by its traditional principles of freedom and equity. Such agreements *inter partes*, whilst corresponding to the mutual interests and needs of the parties concerned, must not lose sight of the principle of absolute maintenance of the sovereign rights, of the jurisdiction and of the administrative autonomy of the Republic. These principles are fully recognised in the Covenant, which we have signed, and therein it is also expressly laid down that international conventions, including any which may be entered into in the future, are valid and shall be kept in force, whilst Article 23 of the Covenant clearly establishes the principle of a conventional régime founded on *inter se* treaties between the different States Members of the League of Nations.

ARTICLE 5 — TOWAGE — DISCUSSION OF THE ROUMANIAN PROPOSAL

M. WINIARSKI (Poland; speaking in French). — The representatives of the Netherlands, Roumanian and Serbian Delegations have met as a small committee for the settlement of two different questions. In the first place, the new text which was adopted by the Sub-Committee on the Polish amendment with regard to towage (1), lays down, amongst other things, that haulage services carried on as monopolies *must be so organised as not to hinder the free transit of vessels*. The Netherlands Delegate desired that, in view of the fact that freedom of transit was mentioned, there should likewise be a mention of the conditions of equality in which such transit should be carried out. On the suggestion of General Mance, to whom we owe in consequence a debt of gratitude, this point was settled by the omission of the word *free*. In this manner no mention is made either of freedom or of equality. We are all agreed that in abstaining from any such mention, and by simply speaking of transit, we do not cease to bear in mind the general conditions of freedom and equality which lie at the foundation of all the articles of the Convention. I will once more read the text of the second paragraph in the form proposed by the Sub-Committee :

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

The question as to whether and in what conditions such service may be established is outside the scope of the present Convention.

With regard to the second point, namely, the Roumanian proposal (2), we all agreed not to add another paragraph to Article 13, and it was decided by a majority to propose instead an additional paragraph to Article 5, to read as follows :

It is clearly understood that any traffic of vital importance for a country, including internal traffic, as well as import and export traffic, may temporarily be given priority over transit traffic.

It was thought that this sentence would be more in place under Article 5.

THE CHAIRMAN (speaking in French). — There would appear to be a difference of opinion on this subject. Is there any objection to inserting the proposal at the end of Article 2?

M. WINIARSKI (Poland; speaking in French). — I see none.

THE CHAIRMAN (speaking in French). — Are you willing to leave the Drafting Committee to decide the best place for it?

(1) See p. 127.

(2) See p. 127.

M. WINIARSKI (Poland; speaking in French). — Yes.

THE CHAIRMAN (speaking in French). — Does anyone wish to speak upon this question?

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — Will the question of towage, upon which we are all, I think, of one mind, be dealt with independently from this question?

THE CHAIRMAN (speaking in French). — Certainly. If no one sees any objection, a vote will now be taken on the towage amendment.

I will now put to the vote that amendment in the form which you have just heard.

The amendment was adopted by 24 votes to none.

THE CHAIRMAN (speaking in French). — The amendment is unanimously adopted.

We now have to vote upon the following text (1) :

It is clearly understood that any traffic of vital importance for a country, including internal traffic, as well as import and export traffic, may temporarily be given priority over transit traffic.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I should like to ask the Polish Delegate a question. The text which he read out at the last meeting, and which received very general approbation, contained certain words which I see are omitted from the version just read, and I should like to ask him if he sees any objection to restoring them. I refer to the words *transit traffic of minor economic importance*; I think the text thus worded would meet with the desired unanimity.

M. CARACOSTEA (Roumania; speaking in French). — We accept Sir Hubert Llewellyn Smith's suggestion.

M. VALLOTTON (Switzerland; speaking in French). — The Swiss Delegation would regret very much to see these words included in the Convention. We hold the view that they would serve no good purpose. The whole attitude of the Convention, to which expression is given at the beginning of the text, recognises that the interests of a country through which transit takes place must be reconciled with those of transit traffic itself. The road to conciliation does not lie in the adoption of a form of words such as this, but in some version of the text which would give satisfaction to the views expressed by our colleagues. The text now before us seems to us totally to ignore the fact that every State which is now so desirous of its own needs being taken into consideration ought to realise that it may any day find itself in the position of a State which needs transit for its own traffic. It is in that direction that we ought all to seek for a solution more likely to meet with agreement than the one now proposed. This is not the first time that we have expressed this view to our Serbian and Roumanian colleagues. We explained to them in Paris the reason why the proposals they then made on the subject were too one-sided, taking too little into account the common need of all, and even the interests of their own country, and it is therefore to be regretted that we should be obliged once again to explain why we cannot accept the amendment now before us.

M. LANKAS (Czecho-Slovakia; speaking in French). — It is with infinite regret that I too cannot accept this text; I am in complete agreement with the Swiss Delegate on the subject, and I think that this view will be shared by all the land-locked States. I really am of the opinion that the present text is a most dangerous one, and would be calculated to jeopardise our Convention. Every national interest is already amply protected by the sentence recognising vital interests which, upon the motion of the French Delegate, was included in the Convention. It constitutes a guarantee which is

(1) See p. 131.

quite sufficient, and any restrictions concerning the application of the Convention should be confined exclusively to occasions of emergency, when vital interests are at stake. To discriminate with regard to the respective importance of different classes of traffic would be a procedure to the last degree indefinite, and as for entrusting the process of discrimination entirely to the States through whose territory the transit takes place, it would be distinctly dangerous, and, I must say, though I am sorry to do so, utterly inadmissible. I sincerely believe that every State will be able to judge in practice, by applying the principles of the Convention, how far it may reconcile its own needs with those of traffic.

M. CARACOSTEA (Roumania; speaking in French). — I will repeat M. Serruys' own saying : "We are doing all we can to make the Convention a durable one." In order to do this, it will be necessary to make some small concessions. In agricultural countries like Roumania, when in the month of November the peasants and agricultural workers stand waiting for trucks to carry their produce to the gates of the Danube, knowing that when winter comes the river will freeze, if they see trains passing through the stations loaded with goods in transit, there will be risings, and then traffic in transit will in its turn be forcibly held up. If you want to make a durable Convention, you must admit the right of certain States at certain periods to claim priority for their own traffic.

M. PIERRARD (Belgium; speaking in French). — The Belgian Delegation cannot modify its attitude of this morning. I fully appreciate the explanation given by our Roumanian colleague, but I still consider that to introduce a principle of this nature into the Convention would be to go against the very principles which underlie that Convention. I propose, therefore, that the passage should be included in the records of the meeting; if it were admitted into the Convention, I should not vote for the latter.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am sorry to find myself in opposition to a certain number of delegates, in particular to the Belgian and Czecho-Slovak Delegates. I notice with satisfaction, however, that the British Delegate has shown a conciliatory spirit by accepting our proposal. In our opinion this proposal does not offer any restriction to freedom of transit. We have no intention of introducing any such restriction. All that we are asking for is the recognition of the lawful rights of certain countries on occasions of emergency.

I would like it to be noticed that the speakers in this debate may be divided into two classes,—those representing countries the products of which are not subject to deterioration, and which allow of a more regular system of export,—that is to say, goods which can be forwarded at any and every season—and those, including ourselves, who represent countries which transport products of a perishable nature, which, if subject to the smallest transport delay, are bound to suffer depreciation and even loss, whilst the population standing in need of them also suffers from any delay in delivery. There is no question here of land-locked States; the important point to know is not whether a State is land-locked or not, but what is the nature of its products,—whether they are subject to depreciation or not. We have suffered much in this way, and it is for this reason that, far from imposing any obstacle, we are only too anxious to grant facilities to land-locked States. It has been said by the Czecho-Slovak Delegate that the French proposal provides for such contingencies, but I explained fully this morning that it does not do so, for the reason that they are exceptional cases; the French proposal is directed towards interests other than those which the Roumanian Delegation and my own have in mind.

It is easy to say that there must not be discrimination between transit traffic and internal import and export traffic, but can a country be asked to make a gift to everyone else of that which itself stands in need of more than anyone else? Added to this, there are the considerations which I detailed this morning, and which include the character of the products, and the obstacles arising from snowfalls and ice during the winter season, all of which may suspend traffic. There is yet another reason. As in our own country in Roumania, all means of transport are the property of the State. Can it for a moment be conceived that the State which has at its disposal all these

means of transport, constructed by it in order to supply the wants of its citizens, should admit all the traffic of other States on a footing of equality with its own? Any Government which adopted this method could not but encounter criticism when once its subjects began to suffer from the results. Not only is our proposal a fair one, but it contains no element of danger.

We are asked why we are not satisfied with the proposal to include the passage in the Minutes. The reply is that once a principle is admitted, and its practice authorised, there need be no apprehension as to embodying it in the text of the Convention. Therefore, I beg the Conference to adopt our point of view and accept a text which the British Delegation has seen fit to support.

Sir Hubert LLEWELLYN SMITH (Great Britain; Rapporteur). — I do not recollect ever having advocated the insertion of this text in the body of the Convention; all that we discussed was the form that it should take.

M. LANKAS (Czecho-Slovakia; speaking in French). — The question now under discussion is such a grave one that I cannot undertake to limit the length of my remarks. The Serbian Delegate mentioned as amongst the most serious factors periods of famine. I maintain that famine constitutes an emergency, and as such is already provided for in the text. The Roumanian and Serbian Delegates cited those periods of the year when certain railway administrations have more than they can cope with in connection with the handling of their own traffic. This is a state of affairs which occurs in every State at some time or another. For instance, in our country, there exists what is called the beetroot season, and that, for us, constitutes a question of vital importance. The beetroot crop has to be transported to the sugar-refineries, and this is a process which lasts from two to two-and-a-half months. With us the season begins at such and such a date, whilst in another country it may begin later, and in a third one still later. If we accepted the formula proposed, it would mean permission during two-and-a-half months to deny freedom of transit to the Hungarians, the Austrians and the Poles, and would put a stop to all transit traffic through our own country. Germany could plead the same state of affairs about a month later, and other States a month later still, and the result would be that freedom of transit would be completely abolished, and to apply our Convention would no longer be practicable. I must, therefore, formally oppose the insertion in the text of this clause. The only method which I could consider would be that of making a statement in the records of the meeting to the same effect as one which is already to be found in the *Green Book*,—namely, that the Convention is not to be construed into permission for traffic in transit to have priority over internal traffic—with an additional declaration making it clear that States, in abiding by the principles of the Convention, retain complete liberty to handle their traffic in whatever way they think best. That is the only text of which I could admit the inclusion in the records.

THE CHAIRMAN (speaking in French). — I propose first of all that the Conference should agree to insert in the Final Protocol...

M. CARACOSTEA (Roumania; speaking in French). — As a proof of our anxiety to reach an agreement, we would accept a proposal to insert the clause in the Final Protocol.

THE CHAIRMAN (speaking in French). — I propose the insertion of the following words :

Nothing in the Convention obliges a State to accord to traffic in transit general priority over internal, export and import traffic. Subject to the strict exercise of the terms of the Convention, any State is free to organise its own traffic as it wishes.

Does the Roumanian Delegation accept this proposal?

M. CARACOSTEA (Roumania; speaking in French). — I can accept the version which I proposed, but I do not know whether it has not since been changed.

M. WINIARSKI (Poland; speaking in French). — Is there not a slight discrepancy between the text of the proposal which we have just heard, and the one which I read this morning, and which met with the approval of the British Delegation? The following is the version I suggest for embodiment in the Final Protocol :

Nothing in the Convention on Freedom of Transit shall be understood to imply that traffic of vital importance for the country, including internal traffic as well as import and export traffic, may not be given priority over transit traffic of minor economic importance.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Yes, that is the one.

M. CARACOSTEA (Roumania; speaking in French). — The word *temporarily* should be added.

THE CHAIRMAN (speaking in French). — Will the British Delegation accept the text in its present form?

Sir Hubert LLEWELLYN SMITH (Great Britain). — If I am clear as to the exact words now proposed, I see no objection, provided the phrase be inserted in the Final Protocol, and not in the Convention.

THE CHAIRMAN (speaking in French). — I propose the insertion in the Final Protocol of the text which M. Winiarski has read.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Thank you.

M. LANKAS (Czecho-Slovakia; speaking in French). — I request that the specific reservations which I made should appear in the records.

THE CHAIRMAN (speaking in French). — It is understood that your reservations will appear in the records.

I will now put to the vote the proposal to insert in the Final Protocol the motion read by M. Winiarski.

The motion was adopted, 20 voting for and 1 against.

THE CHAIRMAN (speaking in French). — I propose to the Conference that the question of jurisdiction—Article 15— be referred to the Committee on Articles 3, 4 and 5 of the Rules of Organisation.

This was agreed.

The meeting adjourned at 8.20. p.m.

TENTH MEETING OF THE PLENARY COMMITTEE

(Tuesday, March 22nd, 1921, at 5 p.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 8 — DISCUSSION OF ARTICLE 13

The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLE 8

M. BROCKMANN (Spain; Rapporteur; speaking in French).—The Sub-Committee appointed to study Article 8 adopted the following text, which I will now read to the Conference :

The present Convention does not govern the rights and obligations of belligerents and neutrals in time of war. With this reservation, the present Convention shall be valid in time of war in the measure compatible with these rights and these obligations.

The Sub-Committee unanimously begs the Conference to adopt the following Recommendation :

That as soon as possible the League of Nations shall invite its Members to meet for the purpose of drawing up new conventions intended to govern the rights and obligations of belligerents and neutrals in time of war.

M. THESLEFF (Finland; speaking in French).—The result of the Sub-Committee's work is a compromise, and, in my opinion, it is a good one. I could not, however, support the Sub-Committee text, and vote for it, unless I could hope that the Conference would adopt the Recommendation expressed by the Sub-Committee on the subject. I am convinced that this will be done, and I trust that the vote will be a unanimous one.

Sir Hubert LLEWELLYN SMITH (Great Britain).—Would it not be possible to separate the amendment of the Sub-Committee from the proposed Recommendation ? Whilst I think it probable that an agreement could be reached upon the terms of the amendment, the Recommendation, which unfortunately I have not yet had time to study, raises considerable difficulties, and if it were possible to postpone discussion of it, I should be very grateful.

THE CHAIRMAN (speaking in French).—Perhaps the Rapporteur would give us his views on the subject.

M. BROCKMANN (Spain; Rapporteur; speaking in French).—I think the two—the amendment and the Recommendation—would be better kept together. The last part of the text adopted by the Sub-Committee might be simplified by substituting for the words *the rights and obligations of belligerents and neutrals in time of war* the words *the rights of communications and transit in time of war*. The latter part, moreover, might appear in the Final Protocol, the text to read as follows :

The Sub-Committee unanimously begs the Conference to adopt the following Recommendation :

That as soon as possible the League of Nations shall invite its Members to meet for the purpose of drawing up new conventions intended to govern the rights of communications and transit in time of war.

Sir Cecil HURST (Great Britain).—When I first saw the terms of the Recommendation which was distributed yesterday, I wondered whether the members of the Sub-Committee who framed it were aware that one of the last actions of the Assembly at Geneva was to reject a very similar proposal put before them, which emanated from the Committee of Jurists who sat at the Hague and prepared the first draft of the Statute for the Permanent Court of International Justice.

The very learned jurists who framed that scheme for the Permanent Court attached to it a recommendation almost identical in its terms with the Recommendation circulated yesterday. It was to the effect that the League of Nations should be invited to hold a Conference or Conferences for the purpose of arriving, if possible, at an agreed codification of the rules of international law. The motive of that proposal was a feeling that the work of the Permanent Court would be handicapped unless there were in existence conventions—what I may term law-making conventions—laying down the rules which the Court would apply. It was very natural for the lawyers who framed the scheme for the Permanent Court to make such a recommendation, but when it came before the Assembly at Geneva, the Delegates of the various Powers there represented felt doubtful as to the wisdom of the proposal and did not adopt it. It appeared to me, when I saw the Recommendation yesterday, that it would seem strange for the Barcelona Conference to adopt a Recommendation couched in terms almost identical with those of a Recommendation which had been rejected by the Assembly only a few months previously, and I find I was right in my conjecture that the members of the Sub-Committee who framed this Recommendation were not aware of what had been done at Geneva.

The objection present to my mind is quite a different one from that which is weighing upon the mind of the head of my own Delegation, who has considered the matter solely from the point of view of his own instructions; and the suggestion that was made privately to the members of the Sub-Committee, that the terms of this Recommendation should be modified, and should be limited to a suggestion to convene conferences for the purpose of determining, by means of a convention, the rights which should govern communications and transit in time of war, was made merely for the purpose of endeavouring to shape the Recommendation of the Conference to a form which would deprive it of any appearance of running counter to the action of the Assembly at Geneva. The suggestion was made without any reference whatever to the actual merits of this proposal, and without any idea that the country to which I happen to belong might be antagonistic to it. I trust, therefore, that this personal explanation may be allowed me, in order that I may not appear to have acted contrary to the instructions of the head of my own Delegation. My sole idea yesterday, when I asked the members of the Sub-Committee to alter the wording, was to endeavour to eliminate any opposition between the action of this Conference and that of the Assembly at Geneva.

If I may speak from a slightly different point of view for the moment, I would ask to be allowed to point out that the motive of the action of the Assembly at Geneva was the feeling that the present time, so soon after the conclusion of the great struggle which has devastated Europe, is scarcely ripe for asking the Powers to sit round a table and confer upon the rights and duties of belligerents. It was thought at Geneva—and I venture to think that it might be wise to consider the matter once more from that same point of view—that it would be better to leave a question of this sort for a little longer, in the hope that there may be a better chance of coming to an agreement when the feelings created by the late war have been allowed to subside.

M. LANKAS (Czecho-Slovakia; speaking in French).—There should be added to the Rapporteur's remarks the fact that the text put forward by the Sub-Committee is a compromise which was only arrived at after protracted discussion; it represents a bridge connecting two quite contrary opinions. I may as well admit that when I left the Sub-Committee,—events follow one another in this Conference with the rapidity of scenes upon a cinematograph, and we flit from one Committee-meeting to another—I was under the impression that a definite agreement on the wording had not yet been reached, and when, therefore, whilst I was listening yesterday to the discussion of other articles which interested me fully as much as this one, a text was placed before us, I had not time, any more than the other delegates, to study this

text, which, I repeat, was not yet drawn up when I left the Sub-Committee. I realise that in order to reach a speedy end, matters must be hurried on a little, but I must maintain that to my mind the Sub-Committee has not yet concluded its task, and that what we have before us is more an outline than a definite proposal.

I still think that the two sentences cannot be kept completely separate. The majority of the members of the Sub-Committee accepted the first sentence only on condition that the second should be added to it. I note to-day that there is a certain amount of opposition to this latter, and, therefore, I see no other way than for the Sub-Committee to meet once more for the purpose of devoting further study to the question.

THE CHAIRMAN (speaking in French).—I will ask M. Lankas whether he would not be satisfied if the Recommendation were quoted in the records of the meeting.

M. LANKAS (Czecho-Slovakia; speaking in French).—I will speak in my own name only, for I do not know whether I can act as spokesman for all my colleagues in the Sub-Committee.

M. SIBILLE (France) and M. VALLOTTON (Switzerland; speaking in French).—No, no; speak in your own name.

M. LANKAS (Czecho-Slovakia; speaking in French). — I do not think it is the Czecho-Slovak Delegation which has the greatest interest in the proposed addition, but I think that the two sentences cannot be kept completely separate.

THE CHAIRMAN (speaking in French).—Has anyone a proposal to make with regard to the vote on these two texts? Is a vote desired on the first part only, or on both together, or on each separately? I would suggest that the vote be first taken on the new text of Article 8, and then on the proposed addition to the article.

M. Gaston CARLIN (Switzerland; speaking in French). — I am against a separate vote, because, as the members of the Sub-Committee pointed out, the combination of the two parts of the article was the result of concessions on both sides. If a separate vote is taken, and the first part adopted without the second, this would constitute a betrayal of the hopes of those members who in all good faith agreed to the text as a whole, in the belief that the second part of it was a concession made to them in exchange for the concession they themselves were making by accepting the first part. In the circumstances, a separate vote would not be fair, because it would not take into sufficient account what passed in the Sub-Committee.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I am not sure whether I have not forfeited my right to speak on this subject, the British Delegation having already spoken through Sir Cecil Hurst, but with your permission, Mr. Chairman, I would say this: If it is found possible to vote on these two motions separately, the British Delegation will vote in favour of the first and against the second. But if, as has been explained, the Sub-Committee finally decided to combine an amended Article 8 with a separate Recommendation, as a compromise only, then I think that would seem to show that the amended article by itself did not meet with unanimous support, and I suggest that it should be referred back to the Sub-Committee to be reconsidered in order to make possible the unanimous acceptance of a new text.

M. PIERRARD (Belgium; speaking in French). — As has just been said, it was not without great difficulty that the Sub-Committee arrived at the text of the article as now laid before you. It represents a compromise between views which at first sight appeared irreconcilable, and I should therefore be much chagrined, now that unanimity has been reached on this text, were the question once more put under discussion; and I think, moreover, that there would be a risk of bringing matters to a worse pass instead of bringing them to a successful conclusion. I would say in all friendliness to our English colleagues that it was a pity they were not able to assist in the work of the Sub-Committee, as I myself had proposed to Sir Hubert Llewellyn Smith that they

should do. Now, if I understand aright, the only thing regarding which Sir Cecil Hurst sees any difficulty is the draft Recommendation. Although not myself a lawyer, I made the suggestion to the Sub-Committee—rather timidly, I admit—that perhaps in view of its technical character it was not competent to give a general ruling on the rights and duties of belligerents and neutrals in time of war, —a rather serious question, and I proposed the addition of the words *so far as transit is concerned*. I will ask our friends of the British Delegation, and, in particular, Sir Cecil Hurst, whether they would not be satisfied with the following text :

...to govern the rights and obligations of belligerents and neutrals in time of war in regard to transit.

Further, in common with the previous speaker, I consider it impossible to take a separate vote on the text itself and on the Recommendation, seeing that several members of the Sub-Committee made the latter an express condition of their supporting the text proposed for the amendment itself.

M. ALVAREZ (Chile; speaking in French). — I wish to say one word in support of the text which has been laid before the Conference by the Sub-Committee. I do not think it is necessary to add anything at the end of the text. This question of the rights and duties of belligerents and neutrals in time of war forms an indivisible whole, and one part of it cannot therefore be dealt with whilst leaving the rest to be settled later. I aver that the question forms an indivisible whole because the rights and duties of neutrals nearly always have reference to trade with belligerents, and therefore if a resolution or convention governing the question is to be drafted, this will really amount to an attempt to regulate freedom of trade and of transit between neutrals and belligerents.

THE CHAIRMAN (speaking in French). — With M. Carlin's consent, I will first consult the assembly on the subject of the Recommendation appended to the new draft of Article 8. It reads as follows :

The Conference recommends that as soon as possible the League of Nations shall invite its Members to meet for the purpose of drawing up new conventions intended to govern the rights and obligations of belligerents and neutrals in time of war.

M. Pierrard proposes to add the words *in regard to transit*. Does it not seem to you, M. Pierrard, that this addition is unnecessary ?

M. PIERRARD (Belgium; speaking in French). — I think it brings the Recommendation more into conformity with the views of the British Delegation. I made the proposal in the interests of general agreement.

THE CHAIRMAN (speaking in French). — In the circumstances we will add the words *in regard to transit* to the proposed Recommendation.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I think the right course is being taken in putting the Recommendation to the vote before voting upon Article 8 in its amended form; and if I am compelled to vote against it I should like the Conference to understand exactly my reason. It is not that the British Delegation has any objection to the League of Nations issuing an invitation to a Conference of this nature; it is that I am without instructions, and that the text of Article 8 was the subject of very profound consideration at the British Admiralty and War Office. These two departments declared their readiness to accept the wording of Article 8 as it stands in the *Green Book*, but I have no authority for pledging them to take part in a Conference with the wide object of revising the rules of war. I should not like to mislead the Conference, if by voting for this Recommendation I gave the impression that the British Government was prepared to take part in a Conference of this kind,—I do not know myself what it would do if the question arose. Accordingly, I wish by my vote merely to reserve the liberty of action of the British Government with regard to the

response which would be given to any invitation issued by the League of Nations as a result of this vote to-day. That, and nothing more, is my intention.

M. ADATCI (Vice-President; speaking in French). — I desire merely to enlighten the Conference upon what took place at the Hague and at Geneva with regard to this question, in order that it may be fully informed before proceeding to vote. You will remember that in June and July, a Conference of Jurists from every country in the world, appointed by the Council of the League of Nations, met at the Hague, and there elaborated a draft Statute for the Permanent Court of International Justice. We worked for about six weeks under the chairmanship of that great American Mr. Elihu Root, and, at the end, we issued a Recommendation similar to the one now under discussion. This Recommendation was laid before the Council of the League of Nations, and the Council, meeting at Brussels in the following October, simply transmitted it to the first Assembly at Geneva. The Assembly at Geneva appointed a committee of which Sir Cecil Hurst and myself were members. We deliberated for a very long time upon the Recommendation; personally, I was in favour of the proposal, that is to say, in favour of the summoning as soon as possible of a Conference to promote the development of international law. The Recommendation had a wider scope than the one now before us. The Committee, which was presided over by M. Léon Bourgeois, adopted our Report, and transmitted it to the first plenary Assembly. The Assembly, after deliberating upon it, rejected it, taking the view that it is as yet too soon for a Conference of this kind to meet; and thus this Recommendation, which first saw the light at the Hague, and which was adopted by the Committee, was rejected by the first Assembly at Geneva.

That is how the question stands. A distinction must naturally be made between the general question of the further development of international law, and the special question of transit. If M. Pierrard's suggestion to add the words *in regard to transit* were adopted, the text would be more precise, whilst the meaning would remain as before. It is for the Conference to take the full responsibility of a free decision on the question.

THE CHAIRMAN (speaking in French). — I have to thank M. Adatci for the very interesting information which he has given us.

I will now put to the vote the amendment proposed by the Sub-Committee, with the addition of the words *in regard to transit*, as proposed by M. Pierrard.

The Recommendation was adopted, 23 voting for and 5 against.

I will now put to the vote the new text of Article 8, in the following terms :

The present Convention does not govern the rights and obligations of belligerents and neutrals in time of war. With this reservation, the present Convention shall be valid in time of war in the measure compatible with these rights and these obligations.

The article was adopted, 30 voting for.

THE CHAIRMAN (speaking in French). — We will now pass to Article 13, to which several amendments have been proposed. We have in the first place an amendment proposed by the Roumanian Delegation. Before asking the Roumanian Delegate to speak, I will ask M. Freire d'Andrade, who wishes to make an observation on the subject of procedure.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — At the time of the discussion of Article 2, I enquired whether the Transit Convention on railways and waterways applied also to roads, and I was told that the question would be discussed with Article 10. The question is one of considerable importance to us. Two amendments have been put in, one by the Italian Delegation, which received satisfaction, thanks to the conciliatory spirit shown by the British Delegation, and the other by myself. I think it is absolutely necessary for the Conference to give a verdict upon this question, which, I repeat, was postponed until the discussion of Article 10.

Sir Hubert LLEWELYN SMITH (Great Britain). — May I draw the attention of the assembly to the amendments already proposed by the British Delegation, and referred by the Plenary Committee to the Drafting Committee. These amendments were drawn up with the purpose of making it absolutely certain that this is a Convention relating to transit by rail and waterway. You will remember that at a very early stage (it was, I think, the first amendment I moved), this amendment was understood to be merely a drafting change, and everyone was agreed that the Convention only applied to transit by rail or waterway. The object of my amendment was merely to ensure that, where there was a small connection by road between a railway and waterway, the Convention should nevertheless apply. This explanation may perhaps re-assure the Portuguese Delegate.

THE CHAIRMAN (speaking in French). — Is the Portuguese Delegate satisfied with the reply ?

M. FREIRE D'ANDRADE (Portugal; speaking in French). — Yes, Mr. Chairman, I will not press the point further.

M. DUCHENE (France; speaking in French). — Before considering Article 13, would it not be advisable to consider the amendments which have been submitted by the Indian Delegation and the Portuguese and French Delegations, on the subject of certain territories where there would be difficulty in applying the terms of the Convention ? These amendments would appear to relate either to Article 10 or to Article 11, or even to Article 12, and it would be well to dispose of them before going on to Article 13.

THE CHAIRMAN (speaking in French). — Would you have any objection to these amendments not being included in the Convention as articles, but being inserted in the records of the meeting ?

M. DUCHENE (France; speaking in French). — If such be the desire of the Conference, I see no objection to the inclusion of these amendments in the Final Protocol.

DISCUSSION OF ARTICLE 13

THE CHAIRMAN (speaking in French). — We can now pass to Article 13. There are three amendments before us. Two have been presented by the Indian Delegation, and the third by the French and Portuguese Delegations.

Sir Louis KERSHAW (India). — My second amendment is withdrawn.

THE CHAIRMAN (speaking in French). — The following is the text of the additional article proposed by the Indian Delegation :

As regards the French and Portuguese settlements in India, it is recognised that their peculiar geographical position prevents the application of the provisions of the present Convention. The conditions of transit may be the subject of special agreements between India and the States concerned.

Sir Louis KERSHAW (India). — When I explained before a meeting of the Conference (1) the attitude of the Government of India, and stated its readiness to apply the provisions of the Convention to the transit trade of India, I mentioned the exception which I shall move later with regard to foreign settlements. I said that the three Delegations concerned were in complete agreement as to the desirability of excluding these settlements, and that all that was necessary was to find some form of words to meet the case. Happily, complete agreement has been reached as to the appropriate formula, and the text of it has just been read. But although an agreement has been

(1) See p. 17.

reached, I presume that the Conference will desire some explanation of the reason why an exception should be made, especially as this question constitutes an exception to the provisions of the Convention.

The first point I should like to make is that the volume of transit trade involved in this exclusion is insignificant,—it is, in fact, quite a small fraction of the total transit trade of India. That, of course, is not in itself a reason for excluding the settlements; the main ground for the exclusion is their very exceptional position. The conditions in this respect seem to me unique,—without parallel in any other part of the world. There are altogether eight of these settlements scattered through India. Some of them are on the sea-coast; others form a small enclave in the interior; on the borders of certain of them there are no customs stations, and goods pass freely from and to British India; in other cases, special routes have been prescribed and customs stations established. But perhaps the most extraordinary feature in regard to these settlements is the fact that they are in all cases compact blocks of territory; sometimes they are made up of parcels of foreign territory interlaced with the surrounding districts. A very good instance of this is Pondicherry on the Madras coast. I have here a map of Pondicherry. It is, unfortunately, not a large-scale map, but you can nevertheless see that it consists of about twelve scattered blocks of territory interwoven with the surrounding districts in the most bewildering fashion. I think anyone looking at this map would agree immediately that in such conditions it would be quite impossible to apply the provisions of the Convention. Another instance is that of the Portuguese Settlement of Daman, on the Bombay coast. Here we have a small block of territory on the sea-coast, then a small enclave further inland, then another enclave still further inland, and, to add to the confusion, there is a small island of British territory in the middle of the third enclave. It would again be impossible to apply the provisions of the Conventions in conditions such as these. Chandernagore is another very good instance. Here we have a small block of French territory of about three square miles, a little north of Calcutta. At present there are no customs frontiers. With the exception of goods required for French officials, which are exempt from duty, goods pass freely into Chandernagore, paying duty in the ordinary way at Calcutta.

I would like the Conference to imagine for one moment what would happen if the provisions of this Convention were applied in such circumstances. It is quite certain that enormous quantities of dutiable goods, such as tobacco, spirits and wines, would pass into Chandernagore, and, of course, the subjects of both Governments would participate in this illicit traffic. The Government of India would be forced, for the protection of its own revenue, to surround Chandernagore with a close customs cordon. I have spent most of my life in India, and I can assure the Conference that a customs cordon of this kind would be quite ineffective. I hope I have said enough to convince the Conference that the conditions are so peculiar that it would be impossible to apply the provisions of the Convention, and that the Government of India is not unreasonable in making this question a vital one, and asking for the exclusion of these settlements.

I feel sure that if the Committee which prepared the Draft Convention had been aware of these peculiar geographical conditions, it would have provided for them. Further, the three Delegations—French, Portuguese and Indian—all agree that they do not wish these settlements to be brought under the Convention; this fact may perhaps convince the Conference that the exception which I am placing before it is justified.

M. DUCHENE (France; speaking in French).—The French Delegation can but confirm the very able and detailed explanation just given by the Indian Delegate with regard to the position of the French and Portuguese enclaves in Hindustan. As, however, the joint amendment which is also before you is based upon considerations of the same kind, I feel that, in my capacity as the member of the French Delegation who is responsible on the colonial side for the results of any resolutions taken by the Conference, I ought to give some explanation with regard to the text which, in conjunction with our Portuguese colleagues, we have laid before you.

From the very outset the French Delegation, which took a prominent part in the

preparation of the drafts now before you, has made plain her intention of bringing the task to a successful conclusion, reserving the right to supplement the work in certain directions in a manner designed to render the Convention universal in its application, and to make its ratification more easy. It was along such lines that the French Delegation contemplated entering into the agreements which we are here to-day to examine in regard to their bearing, not only on the territory ruled by France in Europe, but also on her territory in other continents. With regard to most of this territory, including those countries where transit plays a prominent part,—I should like to lay stress on this point—the policy of France is against any differentiation, and she will not lay claim for an exception to be made on the ground of the special customs or conditions prevailing in any particular country. There are, however, certain regions where the peculiar topographical conditions cannot be ignored; this constitutes a factor which has not escaped the attention either of our Indian or of our Portuguese colleagues in connection with those territories whose interests they are here to watch. The nature of the considerations which they have in mind becomes clear from a study of the very moderate text now before you. The exceedingly moderate terms in which that proposal is couched are not the result of accident; their moderation is an indication of the lively desire evinced by France to arrive at mutual agreement, whilst it is intended at the same time to provide for certain practical needs which our country cannot ignore without the risk of weakening the effect of certain other provisions to which it would in that case have too rashly subscribed. In the territories referred to in our amendment, the conditions are such that attempts to penetrate to the interior meet with every kind of obstacle, and frequently can only be carried out with success by means of native craft, and it is therefore not surprising that in these circumstances any regular supervision or strict control of transit traffic cannot be maintained.

It is only necessary to glance at the map in order to recognise that these territories have yet to realise complete economic independence in their relations with their neighbours. In this connection I will only mention as examples the peculiar position of certain provinces of Cambodia in Indo-China, and in Africa various foreign territories which actually form enclaves among the French possessions; the Portuguese possession of Kabinda, the Portuguese Colony of Guinea, the Spanish Colony of Riomuni, and still others, down to the long corridor which British Gambia forms inside Senegalese territory. As regards these last, the two adjacent Governments have as yet been unable to regulate with any exactitude the conditions in which transit traffic may be carried out.

For all these different territories, just as for the enclaves in India, it is essential that the States concerned should be allowed full liberty to conclude agreements among themselves. The Paris Commission which drafted the Conventions which we are now discussing was obliged to concentrate its attention upon problems of greater urgency, and was unable, therefore, to take these considerations into account, but it has now become necessary to call them to mind, and they must not be left aside whilst the Conference is engaged in perfecting and revising the details of the work begun.

M. BIGNAMI (Italy; speaking in French). — I should like to put two questions to the Indian Delegate. Is there not in the final text of Article 10 a sufficient guarantee for the interests of which he speaks? May I point out that all agreements already concluded are mentioned in the first part of that article, it being there laid down that such agreements shall be maintained in force, whilst the second part of the article deals with any agreements which may be concluded in the future. It is clearly stated that :

The Contracting States further undertake not to conclude treaties, conventions or agreements in future which might conflict with the terms of the present Convention, unless it can be shown that there are geographical, economic or technical reasons which might, in exceptional cases, justify a departure from them.

It seems to me that, as regards both the past and the future, the interests of which the Indian Delegate spoke are actually protected. However, that may be, I should request a form of words much more general in character. There may be other States possessing territory similarly enclaved,—for instance, the Republic of San Marino

in Italy and the Republic of Andorra in Spain. I propose, therefore, that the question be submitted to the Drafting Committee to examine the possibility of finding a more general text than the one which the Delegate of India has just presented to us.

M. PIERRARD (Belgium; speaking in French). — Up to the present we have remained in what I might term the peaceful realms of the rights of transit, but it seems as though we were about to drop from those lofty realms to the abyss of the sacred egoism of States. Whenever during this Conference the principles of freedom and equality have been called in question; I have arisen to defend them,—in somewhat impetuous fashion, perhaps; but at any rate the Conference will do me the justice of admitting that every time there has been an opportunity of a compromise leading to general agreement, and a unanimous vote in favour of the article under discussion, I have taken it. Wine must be watered. I foresaw what would happen when I read the words *economic, topographical and technical considerations*, etc., which appear in one of our articles, and I protest here and now against this attempt on the part of certain States to obtain special jurisdiction for the territories over which they rule. I will not speak of India, where I am not conversant with what would appear to be a very complicated situation; I will go straight to the point, as is my wont.

I will now turn to the countries of Central Africa, with special reference to the Basin of the Congo as defined by Convention. You must know that this Basin does not only consist of the Congo Basin itself, but stretches towards the Atlantic,—on the north to about the second parallel south, and on the south as far as the mouth of the Loge, that is to say, below the mouth of the Congo itself. On the border of the Indian Ocean the maritime zone extends from the fifth parallel north to the mouth of the Zambesi. Speaking roughly, it may therefore be said that the whole of Central Africa is included in this Basin. At the time when the independent State of the Congo was set up in virtue of the Treaty of Berlin, certain measures were taken to ensure that as far as possible these territories should be administered on a basis of freedom for commerce and transit. The Treaty of Berlin is no longer in existence, but its place has been taken by another treaty,—the Convention of St. Germain-en-Laye, which was signed on September 10th, 1919. In Article 6 of that Convention we read :

Navigation shall not be subject to any restriction or dues based on the mere fact of navigation.

It shall not be exposed to any obligation in regard to landing, station or depot, or for breaking bulk or for compulsory entry into port;

and Article 2 states that :

No differential treatment shall be imposed upon the said merchandise on importation or exportation, the transit remaining free from all duties, taxes or dues, other than those collected for services rendered.

You see, therefore, that this Treaty contains clauses which, as a matter of fact, are more liberal than those with which we are now dealing. Why, then, in Central Africa should further exceptions be made for the countries either to the north or to the south of this region? To my mind such a course would be absurd. Not only do I fail to enter into the motives adduced by my French colleague, but I must confess that were the Conference to ratify what seems to me an absolute paradox, I should be obliged to make reservations, and to ask my Government to give me additional special instructions, which I lack upon this subject. I much regret that our colonial expert, who is detained at Brussels, should not be here to-day in order to defend our policy, as he would do with greater force than I can myself. May I repeat that, if the Conference were to confirm such an illogical arrangement as the one proposed, I have no doubt that the Belgian Government would make reservations as to signing the Convention. At all events, I have no instructions to enable me to accept the proposed amendment.

We are in the domain of individual egoism, and therefore, as I said just now, let us look things straight in the face and call a spade a spade. We are speaking here of Central African territories, and I must make every reservation on the subject.

I cannot possibly support the amendment which has been put forward jointly by the French and Portuguese Delegations.

M. DUCHENE (France; speaking in French). — I should like to say a few words in reply to the observations which have just been made by the Italian and Belgian Delegates.

I am quite willing to admit the assertion made by the Italian Delegate to the effect that the peculiar conditions of certain French and Portuguese territories which we have described may also exist in connection with other regions, and I, for my part, see no objection to such cases being placed before us, if they corroborate the facts I have stated with regard to certain French possessions. In reply to a further observation made by the Italian Delegate, I would point out that the question would not appear to me to be completely settled by Article 10. Article 10, subject to the existence of certain exceptional factors, maintains existing conventions in force, and, subject also to certain reservations, provides for the possibility of special agreements. But this particular question is not merely one of conventions; there are, in particular, certain joint measures of an administrative character, the terms of which may vary from time to time, and which therefore require the constant keeping in touch of the authorities of neighbouring States, and it was in order to allow of this that special provisions of the kind proposed appeared necessary.

Turning now to the remarks of the Belgian Delegate, may I hasten to say that I think I can easily set his mind at rest? I think that there is some misunderstanding, and that the Belgian Delegate has, if I may say so, gone rather outside the question. We have no intention here of limiting in any way the effect of the very liberal régimes which had been applied, before this Conference met, to vast stretches of territory in Africa,—in particular, as the Belgian Delegate recalled, to the Basin of the Congo. France was one of the earliest Powers to promote these measures in 1884, thus carrying on traditions which dated from the Congress of Vienna. Not with regard to the Basin of the Congo any more than that of the Niger has France any intention of withdrawing from the conventional régime already in force, which she herself, in friendly conjunction with other States, strengthened by the signature, on September 10th, 1919, of a Convention; nothing is now further from her thoughts than to attempt to modify the terms of this Convention. A glance at the map of Africa will show that, after taking away not only that vast stretch of territory which the Belgian Delegate has shown you by placing a map of it before you,—I mean that vast region included under the Basin of the Congo—but also the equally wide region included under the Basin of the Niger, then, as far as Africa is concerned, the only territory affected consists of certain small parcels of land which, outside a very limited sphere, cannot, I think, be said in any way to affect any resolution which the Conference may be led to take.

Perhaps this misunderstanding serves to show that the terms of our proposal were not sufficiently precise, and if that be so, we are only too ready to devote careful attention to more detailed geographical specifications. I may say in conclusion that to this course the French Delegation would oppose no objection, and, if it appears necessary, I shall be the first to propose that the matter be referred to a special committee, which should study the subject from the point of view both of the territories which we have specified very clearly, and of any other territories the case of which may present itself to the representatives here of other States who feel a similar anxiety with regard to them, in order to determine the scope of the proposed clause with more precision, and in such a manner as may set the mind of every member of the Conference at rest.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I associate myself whole-heartedly with the opinions which have been so clearly put before us by the Indian Delegate and by M. Duchêne of the French Delegation.

Sir Hubert LLEWELLYN SMITH (Great Britain). — This discussion has been one of considerable interest, and must already have suggested to the Conference that, although there may be some advantage in linking the Indian with the French and Portuguese amendments, and discussing them together, there are also very great objections to that procedure, for the real fact is that, in spite of the similarity in the

wording, the bases on which these two amendments rest are entirely different. There may be—perhaps there are—good reasons for both, but they are entirely different reasons, and I therefore venture to suggest that we should discuss the Indian amendment first and the other amendments afterwards; but if the Chair rules that, for the greater convenience of the Conference, we should discuss the two together, I am perfectly prepared to do so.

THE CHAIRMAN (speaking in French). — I see no objection whatever to separating the two.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I think that no-one can have listened to the statement of the Delegate for India without being absolutely convinced that his arguments are conclusive. They are not arguments founded upon conventions or agreements, and I am afraid, therefore, that the suggestion put forward in such a conciliatory spirit by M. Bignami, to the effect that these cases are met by the terms of Article 10, is not quite accurate. The fact is that the Indian amendment was designed to meet an exceptional state of things. It was founded on the fact that it would be an absolute administrative impossibility for the Government of India to treat as separate territorial units, for the purpose of the present Transit Convention, a large number of small fragments of territory, the largest of them extending over only a few square miles, and the smallest of them sometimes only a few acres, most of them entirely unprovided with any customs system of their own, thus presenting a problem which would be absolutely insurmountable if the Transit Convention were to be applied in all its rigour.

I have no authority to speak for India, but I know enough about the country to be convinced that were India required, as a condition of adherence to this Convention, to treat as separate territories for the purpose all these tiny spots of foreign territory which are surrounded by the territories of British India, there would be only one possible course for her to take, namely, not to sign the Convention at all. It could not be done,—it is administratively an impossibility. The arguments put to the Conference by M. Duchêne are of an entirely different order. Although they may be very good arguments, possessing considerable force, they were not founded on administrative considerations, but, if I understood him aright, on the fact that the means of communication in these vast territories in Africa are not as yet sufficiently developed to be capable of affording the facilities for transit contemplated in this Convention. We must all admit that backward territories in Africa cannot be expected to give full transit facilities of the kind which would be reasonably expected in the countries of Europe or America, or in other advanced countries, and I therefore regard M. Duchêne's proposal with much sympathy. I shall ask him, however, whether he has considered two things,—firstly, that there is nothing in this Convention which requires any contracting State to construct new railways or new means of communication, but only to make the best use of those which exist; and secondly, the full effect of those absolutely vital alterations which the Sub-Committee approved and the Conference adopted yesterday in connection with previous conventions and agreements. If he has considered both these facts, and has arrived at his conclusion accordingly, and if the French Delegation tells us that, in spite of this, they cannot accede to the Convention in respect of certain territories in Indo-China and Africa,—then I would ask that the number of territories which they reserve should be reduced to the minimum consistent with their vital interests.

I must say that I look with great misapprehension on the proposal to refer this clause to a sub-committee with a view to extending the benefits of the reservation to other territories, although I should have no objection to its going to a sub-committee, with instructions to consider whether its application cannot be restricted still further as regards those territories to which it is absolutely necessary to apply it. I listened with very great satisfaction to M. Duchêne's statement to the effect that there is not the least intention of applying in these territories any other than a liberal régime with regard to transit, communications and commerce. I think *liberal régime* were M. Duchêne's own words. There is at present nothing in the French and Portuguese amendments which confirms his statement. Would M. Duchêne be averse to adding

some words of a general character guaranteeing that, so far as local circumstances permit, France will ensure that the régime applied to transit in these territories is of a kind to facilitate the commerce and communications of Contracting States? If some addition of this kind were made, it might be well to refer the proposal to a sub-committee, with a view to ascertaining whether the very wide area at present covered by the proposal could not with advantage be reduced; but in this case stringent instructions should also be given not to extend its scope to any further areas.

Meanwhile, could we not come to a decision with regard to the amendment of the Indian Delegate which, as I have tried to explain to the Conference, rests on entirely different grounds? I do not think it has ever been suggested that the Government of India pursued any other than a most liberal policy with regard to transit, communications and commerce. The proposed reservation is not in any way based on a wish to evade the provisions of the Convention, but simply on the impossibility of treating these small territories, these settlements, as separate units for purposes of administration.

I ask that we should divide first on the Indian amendment, after which I shall not oppose a motion to refer the other amendments to a sub-committee.

THE CHAIRMAN (speaking in French). — I have no objection to the two questions being treated separately.

M. DE MADARIAGA (Spain; speaking in French). — Spain is in the same position as France and Portugal in that she possesses in Africa colonies and protectorates which have a very backward development. The Spanish Delegation does not, however, possess any special instructions on this point, and must therefore fall back upon her general instructions to incline to the side of greater freedom, should doubt arise. The Spanish Delegation is of opinion that in principle this paragraph is not needed in order to meet the cases adduced by France, Portugal and Spain, but that later on it might be found to be justified for some special cause. The Convention in its present form affords means for meeting special cases of the kind to which allusion has been made, such as the backward development of a country, etc., but one case exists which obliges Spain to intervene in the matter, and if an article of this nature were contemplated, Spain could not be excluded from the benefit of it. The British Delegate has declared his opposition to increasing the number of territories to which the benefits of this article may be applied, but if they are going to be applied to Portuguese and French territory, and not to any Spanish territory which may be peculiarly situated, then that might constitute the existence of differential interest as far as Spain is concerned. Accordingly, as, in the opinion of the Spanish Delegation, the text has a rather too general character, we shall support the French proposal to refer it to a sub-committee to make a detailed study of each particular case. I am also completely in agreement with the British Delegation in desiring the inclusion of a phrase intended to provide a general safeguard for the principle of freedom.

M. TSANG-OU (China; speaking in French). — The new article proposed by the French Delegation is of special interest to China, particularly in connection with trade in South China, which often involves transit across Tonkin. We are neighbours of France in that region, and I do not think we can refuse to recognise the justice of the French claim with regard to the local difficulties encountered by transport and communications. I do not therefore oppose the amendment; I would simply ask the French Delegation whether, if the assembly approved the idea, there should not be added the words *in conformity with the principles of the present Convention*. Thus, according to the text, the conditions of transit may always become the subject of special agreements between the States concerned, in protected areas and protectorates.

Should China, after having ratified the Convention on Freedom of Transit, make overtures to the French Government with regard to entering into fresh conventions on the subject of transit via Tonkin, I would also ask the French Delegation to agree to base her policy on the terms of the fourth paragraph of Article 10, as adopted yesterday by the Conference.

Sir Louis KERSHAW (India; speaking in French). — I rise only in order to deal with the point raised by the Italian Delegate. The British Delegate has already referred to his proposal on the subject of Article 10, and has explained why that article by itself does not constitute sufficient protection. The second point which the Italian Delegate raised was that a general formula would be preferable to a specific exception. So far as the Indian Delegation is concerned, a general formula, if it had the effect of excluding the settlements from the scope of the Convention, would be equally acceptable, but I can assure the Italian Delegate that several attempts have already been made, without any success, to frame such a formula, the difficulty being that a general formula is usually discovered to include within its scope some other territory which it was not the intention to include.

As I understand it, the general trend of the debate to-day serves to show that the Conference desires to limit the number of exceptions. Now the form in which the Indian amendment has been presented leaves the Conference quite certain as to what is being excepted, namely, the foreign settlements in India, and nothing else. If, in place of that definite amendment, we adopt a general formula, it is possible—in fact, it is almost certain—that territories in other parts of the world will be included. The Indian amendment is in effect, therefore, more limitative than a general one would be.

I would like to confirm the remarks of the British Delegate with regard to the liberal policy followed by the Government of India in all transit matters. The object of this amendment, which I understand the Chairman proposes to put separately to the Conference, is merely to avoid difficulties of administration. It is in no way intended to place any obstacle in the way of the small transit trade with these territories. The main transit trade, as I have already said, will come under the provisions of the Convention, which will be applied whole-heartedly by the Government of India.

THE CHAIRMAN (speaking in French). — Would you be willing for your amendment to be included in the Final Protocol?

Sir Louis KERSHAW (India). — I should have no objection if it had the same validity in the Final Protocol as it would have if embodied in an article, but I prefer the latter alternative. I must leave the decision to the Conference.

THE CHAIRMAN (speaking in French). — The Officers of the Conference will not raise any opposition to a separate article. We will now proceed to vote upon the addition proposed by the Indian Delegate, but in doing so we shall leave open the question of the form which the new article is to take; it is a matter which can be discussed in sub-committee. The Indian Delegate himself is ready to agree that the matter should not be settled now.

M. MATSUDA (Japan; speaking in French). — We are happy to be able to support the proposal made by the British Delegate. In my opinion the method suggested by him is the most practical one. We propose, therefore, that a committee should be set up to study the question whether any limitations or exceptions can be allowed. We are sorry to note a tendency within the Conference to introduce these different proposals, which are all in the direction of restricting the scope of application of the Convention which we are about to conclude. Candidly, we are of opinion that, if this tendency to make one exception after another is carried much further, it will become difficult to arrive at any agreement for the betterment of world conditions by means of freedom of transit. In order to bring the task to a successful conclusion, it is essential that each country should be guided by generous sentiments, and should make more or less of a sacrifice. If States here represented continue to suggest limitations and exceptions, how shall we ever terminate our work? No, they must be guided by principles of generosity, which, in our opinion, are identical with the principle of freedom of transit. It is for these reasons that I must once more repeat the remark which I have made so many times already:—freedom of transit must not be hindered or restricted. It is, then, with great satisfaction that I find myself in a position to support the view taken by my colleague of the Belgian Delegation, M. Pierrard

If either one or two committees are set up as a result of the British proposal I suggest they adopt as the key-note of their proceedings the ideas which, in all sincerity, I have laid before you.

M. DUCHÊNE (France; speaking in French). — I must apologise for rising to speak yet once again, but I will be very brief. I should like, first of all, to thank those members of the Conference who have been good enough to speak on the amendments proposed by us, thus throwing valuable light upon the subject. Taken as a whole, the remarks made have been most judicious, and the French Delegation is perfectly ready to consider them in as liberal a spirit as possible. I agree with the British and Japanese Delegates in thinking that the question ought to be examined more closely by a small sub-committee,—not in order to increase the number of exceptions which may be made in applying the Convention,—exceptions occasioned by the peculiar position of any given territory—that was never the French policy, as I said at the outset—but to see whether such exceptions are justified, and, when they are, to confirm them. I think that this small committee should undertake the study of both amendments considered together, and I am sorry not to be able to take the same view as the British and Indian Delegates on this point. I differ from them in being of the opinion that the cases which we have considered are not dissimilar to the obviously very complicated situation resulting from the existence of enclaved territory in India. It is not only in India that enclaves are to be found. There are enclaves which are as much a source of difficulty to the enclaved States themselves as to the States which surround them. The Portuguese Delegate will allow me to give an example :—in our French Colony of Dahomey, there is a small piece of Portuguese territory absolutely isolated in the midst of French territory, and possessing no sea-board. Its name is Whydah, and its position is in every respect analogous to that of the enclaves of which the Indian Delegate was speaking just now. It surely cannot be denied that cases such as this merit the sanction on the part of the Conference of stipulations of a somewhat special nature to be included in this Convention, and I fail to see how some of these territories can be treated differently from others.

I must therefore conclude by recommending that both amendments be referred to a small committee. This solution appears to me necessary because it would enable useful work to be done;—it is indeed the only solution, because it will allow us to reach the heart of the question.

THE CHAIRMAN (speaking in French). — Does the British Delegate agree that the two amendments be referred to a sub-committee?

Sir Hubert LLEWELLYN SMITH (Great Britain). — I have listened carefully to this most interesting discussion, but I have not heard a single argument brought against the Indian proposal, and I therefore see no object in referring it to a sub-committee. I am perfectly content that a sub-committee should examine the question whether there exist in other parts of the world small enclaves similar to those referred to by M. Duchêne,—in which case they should certainly be treated in the same manner as those which form the subject of the Indian proposal—but I am of opinion that the time is ripe for the Conference to come to a decision on the subject of the Indian motion.

M. DUCHÊNE (France; speaking in French). — Then we shall be under the necessity of asking that the second amendment shall not be referred to a sub-committee either. I assert and I maintain that the conditions are identical. I have cited an example which is typical in every detail,—that of a territory identical in character with the Indian enclaves, and I hold the view that a committee must either be appointed with a view to examining both amendments or else not be appointed at all.

M. PIERRARD (Belgium; speaking in French). — It seems to me that we are confronted with two entirely different questions. Personally I am in favour of Sir Hubert Llewellyn Smith's proposal to vote upon the Indian motion, which would

appear to be founded on a concrete example. With regard to the whole Franco-Portuguese proposal, a further proposal has been made to refer this amendment to a committee, and in token of my desire for conciliation, I support this proposal...

M. SIBILLE (France; speaking in French). — Hear, hear!

M. PIERRARD (Belgium; speaking in French). — I would only request that the committee should not meet before it is possible for an expert to arrive from Brussels; I have to confess that I am not myself sufficiently versed in colonial matters to be able to deal with the question adequately.

Sir Louis KERSHAW (India). — I venture to support the Belgian Delegate's motion. I have heard no objection raised to my amendment; had any been raised, I should have been only too happy to meet it with explanations. I had understood that M. Duchêne supported the amendment, but if it really does contain anything which is not quite clear, then by all means let it be referred to a small committee.

M. BIGNAMI (Italy; speaking in French). — It is with great regret that I must register my inability to vote for the Indian amendment, on account of the fact that it treats of one particular case; whilst we hold the view that some general form of words should be found in order that a convention such as the one now under discussion should not have reference to special cases.

Sir Hubert LLEWELLYN SMITH (Great Britain). — In reply to M. Bignami, I should like to say that if the meeting votes, as I hope it will, in favour of the Indian amendment, such a vote will be entirely without prejudice to the work of the Sub-Committee which will examine the question whether there exist in other parts of the world other enclaves to which similar principles should be applied. If the Sub-Committee finds, as M. Bignami is convinced, that there are such enclaves,—a question upon which I am less certain than he—it will report accordingly, and the Drafting Committee can then easily amalgamate the two amendments in a single article. I claim that the case of India has been proved up to the hilt. Not a single argument has been brought against it, and a vote ought to be taken upon it.

M. BIGNAMI (Italy; speaking in French). — If the Sub-Committee comes upon a form of words more general in character, the Italian Delegate would have no more to say. As, however, we are dealing here with a special case, it should be clearly stated whether it is understood that the Sub-Committee must find such a formula. Only if it did not succeed in doing so would the question arise whether there shall be included in the Convention, as a matter of course, an article dealing with special cases such as the present one. But I repeat once again that we cannot adopt the proposal unless it is understood that the sub-committee will endeavour first of all to find a text bearing a more general character.

M. DUCHÊNE (France; speaking in French). — Several different points of view have been put forward, and have found happy expression, surely, in the admirable speech which the Italian Delegate has just made. This being so, I am of opinion that a settlement ought to be found which will give general satisfaction. Obviously, if we have to find a more general formula, then the interests of India, however important, cannot be isolated. We of the French Delegation were the first to recognise this fact. If, on the other hand, it is a question of a special case,—that of India—I repeat that there is no reason why it should be treated outside other similar cases. In my opinion the Conference is not at present in a position to pronounce a verdict, and it may also be that, however determined we may be, and however much we may narrow down the terms of a clause, stipulations of this nature do nevertheless bear an exceptional character. Now I come to consider the question I must admit that stipulations of this nature are out of place in a Convention which is intended to embody general principles. I think that everyone would be satisfied if there were introduced into the Final Protocol the provisions which an attempt was made to

embody in the two amendments now before the Conference,—both the Indian amendment and the amendment concerning other territories. In the meantime, this need not prevent a sub-committee, or even the Drafting Committee, from considering what form of words should be inserted in the Final Protocol.

THE CHAIRMAN (speaking in French). — It is for the Conference itself, and not for the Officers of the Conference, to decide whether the two provisions are to be amalgamated or are to remain separate. I should like to consult the Conference upon this point.

M. DUCHÊNE (France; speaking in French). — Do you mean amalgamated in the Final Protocol?

THE CHAIRMAN (speaking in French). — Yes, in the final Protocol.

I will now put to the vote the motion to amalgamate the two texts in the Final Protocol.

The vote was then taken, 7 voting for and 8 against.

M. DUCHÊNE (France; speaking in French). — There is not a quorum, and therefore the vote is null and void.

THE CHAIRMAN (speaking in French). — There is certainly not a quorum, but we have as yet no definite ruling upon this point. It might be laid down that in order to obtain a quorum half of the delegates present must vote. I will once more put the question, with the request that every delegate here present will take part in the vote,

The vote was then taken, 1 voting for and 8 against.

THE CHAIRMAN (speaking in French). — In the circumstances, the question cannot be decided, and I propose that the debate be now adjourned until 11 a.m. tomorrow.

The meeting adjourned at 8 p.m.

ELEVENTH MEETING OF THE PLENARY COMMITTEE

(Wednesday, March 23rd, 1921, at 11 a.m.)

DISCUSSION OF ARTICLE 13 (contd.)

DISCUSSION OF ARTICLE 14—REPORT OF SUB-COMMITTEE ON ARTICLE 15

The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 13 (contd.)

THE CHAIRMAN (speaking in French). — The Conference will remember that there arose yesterday afternoon a slight difficulty with regard to the vote upon the amendments proposed by the Indian Delegation and by the French and Portuguese Delegations, and that I suggested the vote should not take place until to-day. Before proceeding to this vote, I will call upon Sir Louis Kershaw, the Indian Delegate, to speak.

Sir Louis KERSHAW (India). — At the close of yesterday's proceedings the Conference found itself in a position of some difficulty, it being impossible to obtain a valid vote on the question whether the two amendments before the Conference should be dealt with together or separately. I hope the Conference will agree that the attitude taken up by the Indian Delegation in this matter was not an unreasonable one, for the course of the debate indicated very clearly that no objection was taken to the Indian amendment on the actual merits of the case, and that the tendency of the Conference was, indeed, rather in favour of it. But as it is apparent that some members of the Conference would prefer both amendments to be referred to a sub-committee, the Indian Delegation is ready to waive its objection, and, in order to save the time of the Conference and to preserve that spirit of harmony which has been such a feature of our proceedings, is quite prepared to agree that both amendments should be sent to a sub-committee.

I should like to add a word with regard to my own position. I have already said that the Government of India regards this question as one of vital importance. My own instructions are precise. Although I have come here with full powers from His Majesty the King Emperor to sign Conventions, it would, I am afraid, be quite impossible for me either to vote for or to sign any Convention which did not safeguard the position of India in this particular matter.

THE CHAIRMAN (speaking in French). — Every member of the assembly will, I am sure, agree that a debt of thanks is owing to Sir Louis Kershaw for his conciliatory attitude in this matter.

Unless there is any objection, we can proceed at once to appoint the Sub-Committee. I propose that all the delegations which took part in yesterday's debate should be represented upon it, namely, the Indian, British, Belgian, French, Portuguese, Spanish, Chinese, Italian and Japanese Delegations, to the number of which might be added the Brazilian and Netherlands Delegations. Has anyone any objection?

This was agreed.

It is not for me to convene this Sub-Committee, but I nevertheless propose that it meet to-morrow.

M. PIERRARD (Belgium; speaking in French). — That would be too soon, Mr. Chairman.

THE CHAIRMAN (speaking in French). — I recollect now that you asked yesterday that time might be allowed for a Belgian expert to be summoned, and I would therefore suggest to the assembly to postpone the meeting of this Sub-Committee until a later date, such as Wednesday of next week.

M. DUCHÊNE (France; speaking in French). — Thursday?

THE CHAIRMAN (speaking in French). — Very well; Thursday at three o'clock in the afternoon.

We will now continue the discussion of Article 13.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation has presented an amendment to substitute for the word *temporarily* the words *for five years*. Article 13 provides for temporary exceptions in favour of devastated regions, on the special grounds of the grave economic position resulting from the devastations perpetrated by enemy troops during the war of 1914-1918, and adds that the countries devastated shall be exempted temporarily from applying the provisions of the Convention. Italy, in common with other countries, was devastated during the war, and suffered much; but we are anxious to see the Convention concluded, and we would therefore point out that the word *temporarily* is not sufficiently precise; it may mean two years, ten years or even twenty years, whilst the Convention is only to remain in force for ten years before being renewed, so that, in practice, the word *temporarily* could not refer to a period longer than ten years. To the Italian Delegation even this period of ten years would appear excessive, and we propose accordingly that a period of five years should be fixed as in Article 378 of the Treaty of Versailles in respect of a number of its provisions. If serious cause arose, it would be for the League of Nations to allow any exception to be made, but we consider it necessary to lay down a maximum period.

M. Georges BONNET (France; speaking in French). — The French Delegation would like it to be known that it cannot support the amendment put forward by the Italian Delegation. In the first place, the amendment does not seem to us to correspond with the terms of Article 23 of the Covenant, which does not lay down any particular period of time for the reconstruction of the devastated areas. Secondly, the period of time fixed, which the Italian Delegation would like to be five years, would appear somewhat arbitrary; the exact time which it will take to reconstitute the devastated areas cannot be foreseen, and in consequence there is no possibility of knowing at what date normal conditions will once more prevail, which will enable these areas be placed under-ordinary administration.

On the other hand, the French Delegation supports the British amendment to Article 13, namely, the proposal to add the following words at the end of the article *to the said territory or part thereof*.

M. BIGNAMI (Italy; speaking in French). — The amendment was put forward by the Italian Delegation after an exchange of views had taken place between its members and those of the French and Belgian Delegations, when these latter declared that they saw no objection to fixing a time-limit, and that they recognised the justice of the Italian point of view. But as the French Delegation, after further study of the amendment, is opposed to it, the Italian Delegation will not press it.

THE CHAIRMAN (speaking in French). — The Italian amendment is withdrawn.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The amendment which I have the honour to put forward might almost be said to be a drafting amendment.

I notice that the French Delegation shows willingness to accept it. The words I propose to add have as their object the restriction of this exception within the narrowest limits possible; I hope they will be accepted unanimously.

I should like to say that, whilst the British Delegation is quite in agreement with the terms of Article 13, which, as a matter of fact, reproduces the terms of Article 23 of the Covenant, yet I feel that so much has been done in the course of our discussion to meet the case put by the Delegates of Poland and Roumania,—it is sufficient to read the revised text of Article 7 and the provision in the Final Protocol to realise this—that I hope the countries whose territories have suffered devastation will take advantage of these exceptions only to the minimum extent possible. I trust that the Polish Delegate, who is presenting an amendment to extend this exception with regard to the devastated countries beyond the terms of the Covenant, will feel that the exceptions which have been made in the course of our discussion are sufficient to induce him not to press an amendment which, I fear, we should not be in a position to accept.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I rise merely in order to support the French Delegation's view, and at the same time to assure the British Delegation that our country, which is essentially a transit country, will do its utmost to provide facilities for transit traffic. But outside the needs of the devastated areas obstacles exist of a technical character which must not be forgotten. In Serbia, for instance, all our metal bridges are destroyed, and although we have done our best to replace them, and to this end have even applied to the countries which possess the largest metal industries, even their efforts added to our own have not been able after the lapse of a whole year to supply the need. I hold, therefore, that the French proposal is fully justified.

M. FRASHERI (Albania; speaking in French). — I should like to thank M. Avramovitch for his declaration that the Serb-Croat-Slovene Kingdom will use every possible means to restore transit traffic. As near neighbours of the Kingdom, I should like to tender him special thanks for the measures taken to facilitate the transit of passengers and goods.

THE CHAIRMAN (speaking in French). — If there is no objection to the British amendment, it is carried.

Accordingly, the words *to the said territory or part thereof* will be added at the end of Article 13.

We now pass to the amendment presented by the Polish Delegation.

M. WINIARSKI (Poland; speaking in French). — This is not an amendment. The Polish Delegation desired to obtain the consent of the Conference for a statement to be inserted in the Final Protocol to the effect that Poland is at liberty to interpret Article 23 of the Covenant in such a way as to include the material damages occasioned by the hostilities which continued until 1920, and have caused havoc to transport. Obviously, the Covenant could not foresee this war, which constituted as it were the winding up of the world war. I must thank the British Delegation for its attitude with regard to the Polish proposal. Poland does not intend to take advantage of this article in order to prolong beyond what is necessary the period for exceptions as provided for under Article 13. I should like to point out that our proposal may concern other countries bordering upon Russia, which have likewise suffered as a result of the war carried on with the States on their Eastern frontiers.

M. PERIETZEANO (Roumania; speaking in French). — I must apologise for having been absent for several days for reasons of health, and I will now ask permission to submit a few observations which occur to me on the subject of this article.

Here is an amendment which asks that allowance shall be made, not only for the war, but also for the events following immediately upon it; I refer to the Polish amendment. Roumania finds herself in much the same position. The principle underlying Article 13 must surely have found wrong expression if the members of the Conference are now beginning to enumerate events which entitle a country to be

exempted from obligations with regard to transit. The intention of Article 13 was to make exceptions in those cases where the devastation wrought by the war would render impossible the carrying out of certain obligations connected with transit. What should have been done, unless complete silence on the subject had been maintained, was to say once for all that which is said in every treaty through the world : *the plea of force majeure may be advanced*. This is permitted in connection with any contract, in private as in international law, and any contract may become null and void as a result; *ad impossibilia nemo obligatur*.

There is one principle which has been admitted throughout the Convention, and that principle we shall do well not to forget now that we are on the point of completing the work. It is that the rights of transit do not impose upon any nation the obligation of carrying out works. A State may be questioned as to its resources, but it cannot be forced to build in order to facilitate transit. It cannot be asked to carry out works over and above those which it considers necessary in its own interest; it would be carrying things to extremes to force anyone in the direction of expenditure which is only calculated to benefit his neighbour. This has already been admitted without dispute. It cannot be open to doubt that if, owing to damages due to the war or shortage of material, a country is not in a position to afford transit, it is exempt from any such obligation, even though the Convention is silent on the matter. You are going to bring a complaint against a State for failing to build a railway across a valley, and then oblige it to carry out the work on the ground that it is needed for transit traffic. That would mean entering upon a path which was never indicated in the Convention, and which certainly lies outside the domain of the rights of transit. These consist in claiming passage over already existing routes, in whatever condition they may be. Should the State concerned see fit to improve its railway organisation, so much the better, but no-one can oblige it to do so, or can dictate a policy with regard to new undertakings.

But there is yet another point. It has been proposed by our Italian colleague to fix a time-limit, and it has been pointed out that in Roumania there are not a great number of routes convenient for transit. Why is this? Is it because the Roumanians are an incompetent people who have shown themselves incapable of doing what has been done in other countries? No; it is because for four centuries Roumania has been incessantly at war with barbarians marching upon her from the South, from the East, from the West,—in fact from all the quarters of the compass. At this very moment our army is on the Dniester, awaiting every moment the onrush of the barbarians. How long will this situation last? I will undertake to cause the necessary railways to be built in Roumania if the Italian Delegate will only tell me how long we may expect these onslaughts to continue. We shall never see the last of them; who can ever tell whether he is really at peace? We are not at war with the Bolsheviks;—at least, war has never been declared. I wish you may never find yourself in their company, and I, personally, M. Bignami, would rather be at war with you than with these Bolsheviks, with whom there is no knowing where it begins and where it will end. How can you expect Roumania, who is never without the threat of a new attack, to undertake the construction of routes for transit traffic at a time when the rest of Europe has unfortunately something else to do than to assist in the defence of the frontier on the Dniester? If you all accompany us to the Dniester, well and good! But as long as you leave us to fend for ourselves, so long will I maintain that, if the attacks against us continue for another four centuries, Roumania during those four centuries will not build the necessary railways, because she will not be able to build them, and, furthermore, if this state of affairs continues for another four centuries, I cannot tell what will become of us. It is obvious that in these circumstances we can make no promises. I am far from wishing these conditions to continue in Roumania, and I trust that you believe me on my word. If I say this, it is not that in the midst of the Bolshevik menace I am looking for a loophole; I would much prefer to see that menace removed, in order that Roumania might be able to build railways both to her own advantage and to that of yourselves.

But there is not only Bolshevism. We do not know what may happen. Restrictions must apply not only to this war but to potential wars, and not only to them but also to cases of *force majeure*, such as Bolshevism or internal revolution. It is under-

stood that in a case of *force majeure*, a country must be excused from affording transit, whilst it also goes without saying, since it is understood once and for all, that every country is only to place at the disposal of transit traffic those facilities which it has available, and cannot be forced to increase its means in order to facilitate transit. If, therefore, Roumania sees no advantage in improving her system of railways, if she has other fish to fry, no-one can oblige her to do it. It is for this reason that the Roumanian Delegation proposes to change the title of the article, and also to substitute for the idea of war as a ground for exception the words *on the grounds of force majeure*. It is unnecessary in any contract to state that the parties will be released from any obligation in case of *force majeure*, whether it be a question of private or of international law. I had proposed the words *through inadequacy of means*, which comes to the same thing. A statement to the effect that every country will afford what means it has at its disposal implies dependence upon the available capacity of its railways, for there can be no suggestion of forcing a State to injure its own interests in order to serve the interests of others.

This amendment, however, has not been brought under discussion; it was relegated to the records of the meeting,—for what reason I do not know. We shall end by reading the records rather than the Conventions. Well, that question is settled. As regards this article, not only must we not restrict the time-limit for this exception, but we must extend the provision to include every possible contingency which may be imagined as arising in the future from *force majeure*, just as is done in private and international law.

THE CHAIRMAN (speaking in French). — I would ask the Roumanian Delegation whether it wishes to press its amendment.

M. PERIETZEANO (Roumania; speaking in French). — A general principle in law is that a situation of *force majeure* arising in a country exempts that country from affording transit. We are only envisaging one case out of a thousand scattered through the Convention. I do not see any objection. We might easily add two or three others, such as revolutions, for instance.

THE CHAIRMAN (speaking in French). — Then you withdraw your amendment?

M. PERIETZEANO (Roumania; speaking in French). — I have no objection.

THE CHAIRMAN (speaking in French). — The Roumanian Delegation consents to withdraw its amendment.

M. SIDZIKAUSKAS (Lithuania; speaking in French). — As soon as the question of devastated territory arose, I thought it my duty to submit a few observations on the subject, with special reference to my own country. The burdens of the war have weighed too heavily upon the country which I have the honour to represent, for its special position not to deserve consideration. Not only was Lithuania, from the first days of the world war, the arena of fierce struggles, with the great armies both of victors and of vanquished using her territory as a highway for their manoeuvres; not only was she obliged to bear the burden of an onerous and protracted military occupation; but, added to all this, Lithuania since the Armistice has suffered, at least towards her Eastern frontier, terrible devastation at the hands of the armed hordes of Soviet Russia, and, I feel constrained to add, of Polish regulars and insurgents.

Situated as she is between Germany and Russia on the one hand, and between the Baltic Sea and Poland on the other, Lithuania forms part of the highway linking up Eastern and Western Europe, and it is owing to this geographical position that she is predestined to play a very special rôle as far as transit is concerned. No less than five international railways cross her territory. It is on this account that the Lithuanian Delegation would like to see a statement in the Final Protocol to the effect that, subject to the conditions provided for in Article 13, she is at liberty to plead lawfully the grave economic situation arising out of the acts of devastation perpetrated on her soil, and due to enemy aggression subsequent to 1918.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Let there be no misunderstanding. I suppose that we are still engaged in a discussion of the Polish amendment. Possibly the Polish Delegate supposed the attitude of the British Delegate towards his amendment to be a trifle more favourable than I fear it really is. After a very close study of the amendments to the Convention, and in particular of the article which, on the motion of the Roumanian Delegation, we have agreed to insert in the Final Protocol, the British Delegation was satisfied that the contingencies which the Polish Delegation has in mind—namely, the impossibility of providing adequate transit in a devastated country—are sufficiently provided for by the terms of this provision. If I may say so, we dislike Article 13, because on principle we dislike exceptions. I am not proposing to alter the article. I understand perfectly that it reproduces a provision of the Covenant, but we are inexorably opposed to extending its scope.

M. WINIARSKI (Poland; speaking in French). — There has indeed been some slight misunderstanding. I agree with the British Delegate that everything has been done to provide for cases where the terms of the Transit Convention are impossible of execution, but we are nevertheless bound in some sort by the Covenant, which provides for certain exceptions in favour of the countries devastated during the war of 1914-1918. For Poland, the war did not end in 1918, but in 1920, and we should very much like the Conference to include a statement to this effect in the Final Protocol. However, the Polish Delegation will not press the point further, and should the Conference decide that the Final Protocol is not the place for such a declaration, we should be content to see it stated in the records of the meeting that the Polish Delegation proposes, should need arise, to appeal to the Council of the League of Nations to take these circumstances into consideration in connection with exceptions to the terms of this article.

THE CHAIRMAN (speaking in French). — I do not suppose the Conference will raise any objection to the last proposal made by M. Winiarski. The Polish Delegate wishes mention to be made in the records of the meeting of the desire expressed by his Government in the proposed amendment.

Does the British Delegate raise any objection?

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation consents.

THE CHAIRMAN (speaking in French). — Then the amendment is withdrawn, and this declaration will appear in the records of the meeting.

M. TSANG-OU (China; speaking in French). — I wish to give the reasons which have caused the Chinese Delegation to ask for the exclusion from the scope of the Transit Convention, at any rate temporarily, of the Chinese Eastern Railway. This railway, which is 1,500 kilometres in length, passes from Russia across Chinese territory to a Russian port, and constitutes an important route for international transit traffic to Russia. It was, I think, in 1896, when the Russian and Chinese Governments signed an agreement making over the construction, administration and operation of this railway to a Russo-Chinese Bank. Since the Russian Revolution, the Chinese Government has taken the place of the Russian Government in assuming responsibility for the efficient working of the railway. In spite of the disorder prevailing in Russia at the present time, traffic is safeguarded, but the Chinese Government does not consider itself entitled to assume on behalf of Russia the obligations contained in the present Convention, until there is a Russian Government able to join with the Chinese Government in ratifying the Convention. All that the Chinese Government asks is that traffic over this railway should be excluded temporarily from the scope of the Convention, and that the regulations to which international traffic over the railway is at present subject may be maintained in force until a stable Russian Government is in being. I would ask to be allowed to plead the provisions of Article 13 in order to insert a passage of this kind in the Final Protocol.

THE CHAIRMAN (speaking in French). — The following is the text submitted by the Chinese Delegate :

The Chinese Delegation requests that transit on the Chinese Eastern Railway be temporarily excluded from the Convention, until such time as there is a stable Russian Government with which China may come to an agreement in virtue of the Treaty of Concession for this railway.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I rise as Chairman of the Sub-Committee which after a very long discussion arrived, as we thought, at an agreement with regard to the relation of this Convention to previous conventions, an agreement which would appear to cover completely the case cited by the Chinese Delegation. M. Tsang-Ou was himself a member of that Committee. Clearly, so long as Russia is in its present condition it is not a Contracting State, and, under the terms of Article 10 in its present form, a convention concluded with a non-contracting State is not abrogated. The Contracting State merely undertakes to endeavour, as opportunity occurs, to bring conventions of this kind into accord with the spirit of our Transit Convention. There is clearly a desire to look forward to the time when there will be in Russia a responsible Government with which China can negotiate. I hope that after this explanation the Chinese Delegate will not insist upon a special reservation which would revive the whole question of Article 10.

M. BIGNAMI (Italy; speaking in French). — For the same reasons as those which I explained in regard to the amendment presented by the Indian Delegation, I would beg my esteemed colleague, M. Tsang-Ou, not to press his proposal any further. Otherwise, we should be introducing an exception which does not appear to me justified, and I therefore second the observations made by Sir Hubert Llewellyn Smith on the subject.

M. TSANG-OU (China). — I do not in any way oppose the views put forward by my British and Italian colleagues. I did not ask that the Chinese Eastern Railway should be completely excluded; I simply stated that, as long as a convention exists between China and Russia, China has not the right to take the sole responsibility of bringing that Convention into accord with fresh provisions. In order to do this, China must await the setting up of a stable Government in Russia, but that does not mean that China will not fall in with the terms of the Convention. The obstacle to which I referred is a theoretical one; in practice China will do all she can to harmonise the terms of the two Conventions. In any case, if the Conference is unwilling to introduce a specific mention of this kind into the Protocol, I will ask for my statement to appear in the records.

THE CHAIRMAN (speaking in French). — It will, of course, appear there.

M. MATSUDA (Japan; speaking in French). — One word only. I am in agreement with the view taken by the British Delegate on this question. As I understand it, my Chinese colleague meant to convey by his statement that China would like to apply the terms of the Convention with the consent of Russia, having in view the present very obscure situation in that country.

THE CHAIRMAN (speaking in French). — Does anyone else wish to speak on Article 13?

I will now put it to the vote.

Article 13 was adopted.

DISCUSSION OF ARTICLE 14

THE CHAIRMAN (speaking in French). — We will now pass to Article 14.

The French Delegation proposes a different text for this article, and also a new article, to be called 14 (a). These will read as follows :

ARTICLE 14

As regards the High Contracting Parties which were signatories to the Treaties of Peace concluded with Germany on June 28th, 1919, with Austria on September 10th, 1919, with Bulgaria on November 27th, 1919, and with Hungary on June 4th, 1920, the present Convention shall in no way prejudice their rights and obligations arising from the above-mentioned Treaties.

ARTICLE 14 (a)

The present Convention shall be considered as the General Convention regarding the international régime of transit referred to in Article 279 of the Treaty of Peace with Germany concluded on June 28th, 1919; Article 331 of the Treaty of Peace with Austria concluded on September 10th, 1919; Article 246 of the Treaty of Peace with Bulgaria, concluded on November 27th, 1919, and Article 314 of the Treaty of Peace with Hungary concluded on June 4th, 1920; of Article 17 of the Treaty concluded between the Principal Allied and Associated Powers and Poland on June 28th, 1919; Article 19 of the Treaty concluded between the Principal Allied and Associated Powers and Czecho-Slovakia on September 10th, 1919; Article 15 of the Treaty concluded between the Principal Allied and Associated Powers of the Serb-Croat-Slovene State on September 10th, 1919, and Article 15 of the Treaty concluded between the Principal Allied and Associated Powers and Roumania on September 9th, 1919.

M. SIBILLE (France; speaking in French). — None of us has received a mandate to revise the Treaties of Peace which put an end to the late war. We should therefore all approve the principle laid down in Article 14 in the following terms :

The present Convention does not prejudice the application of the Treaties of Versailles, Saint-Germain, Neuilly, etc., between the Powers signatory to those Treaties.

But the text proposed to us appears to me open to criticism. We must not merely refer to a few treaties and add the word *etc.* We must enumerate all the treaties which the Convention we are drawing up does not prejudice. Moreover, the text of the article itself is somewhat lacking in precision, and in my opinion it would be preferable to use the following text :

The present Convention shall in no way prejudice the provisions of the Treaties of Peace concluded with Germany, Austria... nor the rights and obligations of the High Contracting Parties, in so far as they are signatories to the above-mentioned Treaties.

Allow me to recall the terms of Article 379 of the Treaty of Versailles. This article reads as follows :

Without prejudice to the special obligations imposed on her by the present Treaty for the benefit of the Allied and Associated Powers, Germany undertakes to adhere to any General Conventions regarding the international régime of transit, waterways, ports or railways which may be concluded by the Allied and Associated Powers with the approval of the League of Nations, within five years of the coming into force of the present Treaty.

Thus Germany must accede to the Convention which we are preparing. It must be fully understood that this accession shall in no way prejudice the provisions of the Treaty of Versailles. It must be fully understood that this accession will leave untouched the obligations imposed on Germany, without reciprocity, by the Treaty of Peace. It must be fully understood that this accession will leave untouched certain obligations which must remain in force for these five years—in particular, Germany's obligation to convey in transit through her territory all goods and persons proceeding from and destined for the territories of the Allied Powers. Further, the provision must be reserved by which Germany is obliged—and, I repeat, without reciprocity—

to grant national treatment to persons and goods passing through her territory. The slight reservations which I have made should, I think, be the subject of a provision in the Final Protocol.

I now ask the Conference to refer Article 14 to the Drafting Committee, in order that due satisfaction should be given to the brief remarks which I have just made, not only in the interest of France, but also in that of the Allied and Associated Powers which signed the Treaty of Versailles.

THE CHAIRMAN (speaking in French). — If M. Sibille sees no objection, we might add the words *of Peace* after the words *the application of the Treaties*, and omit the word *etc.*

M. SIBILLE (France; speaking in French). — Let us leave *etc.* and refer the whole to the Drafting Committee, which will place before us a final text to which we shall doubtless all agree.

THE CHAIRMAN (speaking in French). — I now put to the vote the motion to refer Article 14 to the Drafting Committee.

The motion was carried.

THE CHAIRMAN (speaking in French). — It seems to me that Article 14 (a), which the French Delegation proposes to insert, could also be referred to the Drafting Committee.

M. SIBILLE (France; speaking in French). — I was about to make precisely the same remark regarding Article 14 (a).

Sir Hubert LLEWELLYN SMITH. — In my opinion it would be an excellent idea to refer this article to the Drafting Committee, especially as it raises questions which are little more than questions of drafting.

THE CHAIRMAN (speaking in French). — Is there any objection to referring Article 14 (a) to the Drafting Committee?

Article 14 (a) was referred to the Drafting Committee.

M. VALLOTTON (Switzerland; speaking in French). — The Drafting Committee might also consider whether this article should appear, not in the Convention, but in a final protocol. This is in the interest of the Convention itself. I am voicing this opinion now because I have heard it expressed in various quarters.

Sir Hubert LLEWELLYN SMITH. — I would suggest that it should be for the Drafting Committee to consider the proper place for this provision.

M. SIBILLE (France; speaking in French). — We all agree therefore that the Drafting Committee shall submit to us proposals, which we shall probably accept.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Since Article 14 (a) has been referred to the Drafting Committee, I would ask the French Delegation to be so good as to agree to a slight alteration in this article. The article begins thus :

The present Convention shall be considered as the General Convention regarding the international régime of transit...

While reserving the point of view of our Government, we ask the French Delegation to agree that the words *superseding the provisions relating to the international régime* shall be substituted for *regarding the international régime*. The idea is the same, but this text would seem to be clearer.

THE CHAIRMAN (speaking in French). — I propose that the question be referred to the Drafting Committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In these circumstances we ask that a member of our Delegation should sit on the Drafting Committee.

THE CHAIRMAN (speaking in French). — Certainly.

M. POLITIS (Greece; speaking in French). — The list of Treaties of Peace in Article 14 (a) does not include the Treaty of Sèvres. The attention of the Drafting Committee should be drawn to this point.

REPORT OF SUB-COMMITTEE ON ARTICLE 15

THE CHAIRMAN (speaking in French). — We now come to Article 15. The Sub-Committee proposes a new text as follows :

In the absence of any direct agreement between the parties concerned, any disputes as to the interpretation of application of the present Convention shall be brought before the Permanent Court of International Justice, unless, by the application of a special Convention or a general arbitration clause, a settlement of the dispute be effected, either by arbitration or in any other manner.

The procedure shall be in the form of a request by the Government which intends to submit the dispute to the Court.

Nevertheless, in order as far as possible to settle these disputes in a friendly manner, the Contracting States undertake, before taking any legal action, and having due regard to the rights and attributions of the Council and Assembly, to submit these disputes for an advisory opinion to the body which would be instituted by the League of Nations as the advisory and technical body for the Members of the League in matters concerning Communications and Transit.

In urgent cases, a provisional opinion may be given recommending any temporary measures, destined more particularly to restore the facilities of free transit which may have existed before the execution of the act or deed which gave rise to the dispute.

I call upon M. Van Eysinga, of the Netherlands Delegation, Rapporteur of the Sub-Committee which has prepared this text.

M. VAN EYSINGA (Netherlands, Rapporteur; speaking in French). — The Drafting of Article 15 was entrusted by you the day before yesterday to the Sub-Committee which had drawn up the new text of Articles 3, 4 and 5 of the Scheme of Organisation. This Sub-Committee has held several meetings. Conversations followed, and, although I cannot say that agreement was reached without difficulty, I have the satisfaction to observe that a general agreement has been arrived at regarding the text which has just been submitted to you.

In respect of disputes arising from the Convention, Article 15, in the form in which it exists in the *Green Book*, lays down that, in default of a direct agreement between the Parties, recourse may be had either to the Court of International Justice of the League of Nations, or to arbitration, or to any other method of settling such difficulties. As regards this jurisdiction, there was hardly any disagreement among the Members of the Sub-Committee. The difficulties arose in respect of what may be called the method of conciliation preceding the appeal to the tribunal. I shall deal in turn with each of the four paragraphs which form the new text submitted to you by the Committee.

The first paragraph reproduces the details of the judicial procedure in the form in which it appears in the *Green Book*. I will call the attention of the assembly to two points. As regards arbitration, the Sub-Committee unanimously recognised that the article provides for arbitration *ad hoc* founded on an *ad hoc* compromise, as well as for such arbitration as may be laid down in a general clause. The Sub-Committee also recognised that the application of the present Convention, in the form in which

it appears in the *Green Book*, only makes provision for disputes in which one of the Parties claims that the other is applying the Convention in a manner which is not in conformity with the Convention itself, and that it does not provide for cases in which one of the Parties claims that it does not agree with the application of a Convention by other Parties, even though this application is in conformity with the text of the Convention. On this point I think that we shall all agree, as the Convention has done.

The second paragraph is new. It seems to me that, in the first line, the words *before the Court* could be omitted, and added at the end of the paragraph. This paragraph was the result of a request addressed to the Sub-Committee by one of the delegations, with regard to the connection between our text and the Code of Procedure laid down in the Statute of the Court of International Justice of the League. Article 40 of the Statute of the Court of Justice lays down that cases shall be brought before the Court either on notification of an agreement to do so or by a request addressed to the Registrar of the Court. The question arose whether it was necessary or desirable to define the methods of instituting the procedure in the Convention itself. In this matter the Director of the Legal Section of the League of Nations gave us the benefit of his views. In his opinion, which was shared by several delegations, it would be desirable to introduce the methods of instituting the procedure into the Convention. For this reason the Sub-Committee proposes that, in accordance with our views, it should be laid down that the method of recourse should take the form of a request.

Several difficulties arose with regard to the third paragraph, which deals with the procedure to be followed before appealing to the tribunal. On this point the Conference was particularly concerned with an amendment proposed by the French Delegation. This Delegation proposed another text, which I shall not read, as it is known to all of you. I shall confine myself to pointing out the principal objections which the French Delegation raised to the text of the *Green Book*. The French amendment reads : *Before taking any legal action, the High Contracting Parties undertake to submit the disputes for an advisory opinion to the Council of the League of Nations, which will consult, so far as it may consider necessary, any technical organisation constituted for that purpose.*

In their verbal statement of the reasons for this amendment, the French Delegation first of all called attention to the fact that Article 37 of the Statute of the League of Nations states that when any Treaty or Convention which is in force recommends reference to jurisdiction to be established by the League of Nations, the Court shall constitute such jurisdiction. The French Delegation also emphasised the fact that the text of Article 15 of the *Green Book* seemed to include, even after an appeal to a Tribunal, such methods of conciliation as might take place before the Advisory and Technical Committee. This Delegation affirms that, in the codes of procedure of certain States, conciliation has always formed part of an appeal to a Tribunal, whereas, according to Article 37 of the Geneva Code, the League of Nations only desires an appeal to the Court without previous conciliation.

In the second place, the French Delegation asserts that, in case of any dispute, if an appeal is made to the co-operation of a body which was simply formed as a result of a resolution of the Assembly, this body, whose life would only be ephemeral, might in some way be rendered permanent in the text of a Convention.

In the third place, the French Delegation stated that, as the Covenant of the League of Nations provides for active co-operation on the part of the Council as regards the settlement of disputes, this duty of the Council ought to be notified in our text also. For this reason the French Delegation proposed to nominate the Council itself, which would, in so far as it might think necessary, consult any technical body formed for this purpose. The Council would not necessarily give a decision in respect of all disputes. It might refer to a technical organisation formed for this purpose. A certain number of delegations raised serious objections to this proposal. It was said first of all that it would perhaps be undesirable for our Conference not to follow a procedure already adopted by the Assembly in its Resolutions of December 9th last, on the occasion of a certain number of disputes similar to those with which we are now dealing. At that time the Assembly submitted for settlement, first of all to the Advisory Committee, and, in the second instance, to the Court of Justice, questions similar to those with which we are now dealing.

In the second place, serious objections were raised to the suggestion that the Council, which is primarily a political body occupied only with questions of the highest importance, should be empowered to settle all difficulties which may arise in our organisation. However, the delegations which raised these objections tried as far as possible to satisfy the French Delegation, which strongly urged that this task should be entrusted to the Council. The spirit of conciliation which guided our work led us to adopt a text which is a compromise, like all that we are doing here; I will venture to read this text to you, pointing out the various concessions which have been made.

Nevertheless, in order as far as possible to settle these disputes in a friendly manner, the Contracting States undertake, before taking any legal action, and having due regard to the rights and attributions of the Council and Assembly, to submit these disputes for an advisory opinion to the body which would be instituted by the League of Nations as the advisory and technical body for the Members of the League in matters concerning communications and transit.

I venture first of all to call attention to the words *before taking any legal action*. They were inserted to satisfy the first observation of the French Delegation. It is quite understood that the co-operation of the Committee which we are to form does not constitute part of the appeal to the Tribunal. We have been careful to avoid the difficulty which would arise if a mandate were granted to an organisation which might afterwards disappear, by saying that differences would be submitted to *the body which would be instituted by the League of Nations*. Obviously it is the Committee to be elected by our Conference in a few days which is referred to in this paragraph, but the Geneva Assembly may at any time change the name or organisation of the Committee thus provided for.

As regards the desire of the French Delegation to entrust all disputes to the Council, the proposed text reserves all the rights and powers not only of the Council but also of the Assembly in such matters. Obviously we have no competence to modify in any way the articles of the Covenant, and we have therefore reserved all the rights and powers of the Council and Assembly as regards the settlement of disputes. I am putting the matter as clearly as possible when I say that, in the opinion of the Sub-Committee, the reservation in respect of the rights and powers of the Council and Assembly requires that, if one of the parties informs the Council of a dispute, and maintains that this dispute comes within the scope of Article 15 of the Covenant, the Council will thereby be called upon to give its decision regarding this dispute. Further, it is understood that the rights and powers of the Council referred to in the article include, amongst others, the right of control on the part of the Council and Assembly with regard to technical organisations. In virtue of this right, no opinion of the organisation may be communicated to the parties, unless subject to the right of control of the Council, which, subject in its turn to the right of the Assembly, may defer this communication, if it considers, for example, that the dispute comes within the scope of Article 15 of the Covenant. I think that what I have said is in complete agreement with the Resolution of the Assembly regarding the relations between the technical organisations on one hand and the Assembly and Council on the other.

As regards the last paragraph I can be very brief. We have been apprised of a French and a Roumanian amendment involving the omission of paragraph 2 of the corresponding Article of the *Green Book*. The Brazilian Delegation, on the other hand, proposed to modify it somewhat, and I think we might all adopt the paragraph in the form in which you see it now, with the words *in urgent cases, a provisional opinion*—that, of course, of the Committee which is called upon to take a decision in the matter—*may be given recommending any temporary measures destined more particularly to restore the facilities of freedom of transit which may have existed before the execution of the act or deed which gave rise to the dispute*. This was the result of the compromise at which the Sub-Committee unanimously arrived.

THE CHAIRMAN (speaking in French). — The applause of the Conference expresses, better than I can do so, its thanks to M. van Eysinga for his excellent statement.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I merely wish to ask whose is the provisional opinion referred to,—that of the Advisory Committee, that of the Council of the League of Nations, or that of the Court of Justice? I remember that when we drafted this article in Paris it was said that it would always be the Advisory and Technical Committee which should give opinions. In order to avoid misunderstanding, therefore, it would be desirable to state which organisation shall give a provisional opinion.

M. van EYSINGA (Netherlands; speaking in French). — My reply to the question put by the Delegate of the Serb-Croat-Slovene State is very brief. Paragraph 4 refers to a provisional opinion of the organisation named in paragraph 3. We might therefore say :

In urgent cases a preliminary opinion may be given recommending any temporary measures destined more particularly to restore the facilities of free transit which may have existed before the execution of the act or deed which gave rise to the dispute.

This would be perfectly clear.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If it indeed refers to the Technical and Advisory Committee, I will no longer press the point, but I wish to have this information in order to avoid difficulties.

THE CHAIRMAN (speaking in French). — It is understood that nothing will be added.

M. POLITIS (Greece; speaking in French). — We seem to be ignoring the existence of the Advisory and Technical Committee when we speak of *the body which would be instituted*; the conditional tense is even used. I therefore agree with M. Avramovitch that this Committee should be named, since it exists, since we have drawn up its regulations here, and since we have instituted it ourselves. But M. van Eysinga has just said that this organisation might one day disappear; since it is intended to make it disappear before it is brought into existence, we might therefore say *to the Technical and Advisory Committee or to any other body which may be substituted for it in the future*. But I should like this *Advisory and Technical Committee* to appear in the text of this article.

M. van EYSINGA (Netherlands, Rapporteur; speaking in French). — I endeavoured just now to emphasise as far as possible the fact that there was no doubt, but that, on the contrary, there was perfect agreement within the Committee on this point. It is, of course, the Committee which we are going to appoint which is referred to in the third paragraph of this text. In order to satisfy the wishes of the French Delegation, we had at the same time—and I think it was quite reasonable—to consider the possibility, which will perhaps never be realised,—one never knows—that this Committee may be replaced by another bearing another name. It was in order to meet this possibility that we spoke of an organisation which would be instituted by the League of Nations. But, in so far as our Advisory Committee exists, it is to this Committee that paragraph 3 refers. There is no possible doubt on this point.

M. POLITIS (Greece; speaking in French). — Two words should be added.

THE CHAIRMAN (speaking in French). — I will put to the vote the Sub-Committee's new text of Article 15, amended as the Rapporteur has indicated.

Article 15 was adopted, 29 voting for.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I do not wish to re-open the discussion, but I think that the doubt which has arisen might be dispelled if we made paragraph 4 a continuation of paragraph 3. It would then be seen that it is a continuation of the same idea.

THE CHAIRMAN (speaking in French). — This observation is very just, and I think that the Rapporteur will agree.

M. van EYSINGA (Netherlands, Rapporteur; speaking in French). — I entirely agree.

THE CHAIRMAN (speaking in French). — You see the excellence of the method of work which we have adopted; through having appointed a Sub-Committee which has considered all the amendments before a word has been said on this Committee regarding any Article, we have arrived at agreement, and perfect agreement.

We have now only to discuss Article 16, as Articles 17 *et seq.* are Formal Articles, and may at once be referred to the Drafting Committee.

The meeting adjourned at 1.15 p.m.

TWELFTH MEETING OF THE PLENARY COMMITTEE

(Wednesday, March 23rd, 1924, at 5.45 p.m.)

DISCUSSION OF ARTICLES 16 TO 23 — REFERENCE TO SUB-COMMITTEE OF THE BRAZILIAN PROPOSAL WITH REGARD TO ARTICLE 2 — CHAIRMANSHIP OF M. HANOTAUX, PRESIDENT

The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 16

THE CHAIRMAN (speaking in French). — We now come to Article 16 : *Consequences of non-execution.*

Several amendments to this Article have been submitted, by the Brazilian, British, French and Roumanian Delegations. All ask for the Article to be omitted.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I will not keep the Committee more than a moment. The British Delegation moves the omission of this Article because it is clear that after the changes which have been made in the Articles dealing with the settlement of disputes, it cannot remain as it stands, and, moreover, appears to them to be superfluous. If, however, anyone in the Committee holds a different opinion, the British Delegation would be willing to bring forward a motion for the Article to be referred to the same Committee that has arrived at such a happy solution of the whole question of the form of procedure for settling disputes, in order to see whether there is really any necessity for including in the Convention an article prescribing the procedure to be taken in case of non-execution.

M. Georges BONNET (France; speaking in French). — We agree with the British Delegation that the article should be omitted.

M. CARACOSTEA (Roumania; speaking in French). — We also support the proposal of the British Delegation.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — We also.

THE CHAIRMAN (speaking in French). — Does anyone oppose the omission of this Article?

Article 16 was omitted.

DISCUSSION OF ARTICLES 17 TO 22

THE CHAIRMAN (speaking in French). — We will now discuss the Formal Articles. I think they should be referred to the Drafting Committee. However, as amendments to them have been submitted, the Conference need not refer them *en bloc*, and can deal with the subject-matter of the amendments. There is no need to discuss Articles 17 and 18, *Ratification* and *Notification*, which are connected with the signature.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation is willing to second the proposal to refer these articles to the Drafting Committee, but on condition that the Drafting Committee shall allow the authors of the amendments submitted to the Conference to defend them before the Drafting Committee.

THE CHAIRMAN (speaking in French). — This shall certainly be done.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — There will probably be hardly any discussion on these Articles, and for this reason it seems to me preferable to consider them here. The Conference will then decide whether they should be referred to the Drafting Committee or not, because we cannot tell beforehand whether we shall only deal with questions of drafting.

Sir Hubert LLEWELLYN SMITH (Great Britain). — We might all agree to refer Articles 17, 18, 19 and 20 to the Drafting Committee, but with regard to Articles 21 and 22, I am inclined to agree with the Serb-Croat-Slovene Delegation. We ought to give some indication to the Drafting Committee, particularly on the subject of Article 21.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I accept the proposal of the British Delegate, but I ask that in Article 20 the words *eighteen months after such ratification* shall be substituted for *July 1st, 1920*. I think that the period prescribed for the application is too short.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I agree with the Serbian Delegate that the question of the period to be allowed under Article 20 for the various countries to bring their internal legislation into accord with the Convention is not a drafting question. Nevertheless, I venture to suggest that we cannot satisfactorily amend this Article now, until we have before us the proposals of the Drafting Committee as regards the form which the instruments should take. I can imagine a text which would not necessitate the naming of any period, and I would, therefore, ask the Serbian Delegate to allow this Article to be referred to the Drafting Committee in its present form.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I agree with the remarks of the British Delegate.

THE CHAIRMAN (speaking in French). — If no one else wishes to speak, Articles 17 to 20 inclusive will be referred to the Drafting Committee.

DISCUSSION OF ARTICLE 21

We now come to Article 21. The Polish Delegation has submitted an amendment to this Article, but has just agreed that it shall be referred to the Drafting Committee. Does anyone object?

The proposal is carried.

We now come to an amendment by the Italian Delegation.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation proposes to reduce the period from ten years to five. We have before us an international convention, established for the first time, and treating of hard questions, the application of which may be very difficult. We must not forget that the world is still in a state of unrest, and that very complicated conditions prevail in certain countries, such as Russia. For this reason we propose to reduce the minimum period for the denunciation of the Convention to five years.

M. Georges BONNET (France; speaking in French). — The French Delegation adds its support to the Italian Delegation in proposing that the Convention should

be concluded for a period of five years. It also asks that the Convention should be renewed by tacit consent;—in fact, the French Delegation considers that, in view of the novel character of the Convention on Transit, it might be dangerous to enter upon an engagement for too long a period. To quote precedents, I will remind you that the postal and telegraphic conventions are subject to revision every five years, and that in view of the exceptional circumstances which we are experiencing, the last Madrid Conference was only concluded for four years, and the next meeting will be held in 1924. But this is a question of international agreements, concluded many years ago, and does not, as is the case to-day, refer to matters which are almost entirely new. The French Delegation, therefore, like the Italian Delegation, considers that a period of five years is sufficient. Moreover, it is of opinion that it would be advisable to fix in some other way the time at which the denunciation should be made; it therefore asks you to decide that this denunciation should take place six months before the expiration of one of the periods of five years. This proposal is intermediary between the *Green Book* and the Italian proposal.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation supports the proposal of the French Delegation, which is similar to that of the Italian Delegation; but I should like to call the Committee's attention to the fact that, as the Article is at present drafted, the date from which the period of five years begins is the date on which the Convention comes into force, and this date is fixed by an earlier Article as that on which at least three Powers have ratified the Convention. It appears to the British Delegation that the period of five years ought to begin from the date of ratification by the Power which desires to exercise its right of denunciation. I am not suggesting any particular form of words, because this article should be sent to the Drafting Committee. If the French Delegation agrees, we should like to see inserted something to the following effect : *five years from the date of ratification by the State desiring the denunciation.*

THE CHAIRMAN (speaking in French). — The Drafting Committee will take note of this recommendation.

M. Georges BONNET (France; speaking in French). — The French Delegation entirely agrees with the British Delegation.

M. REINHARDT (Austria; speaking in French). — I think we all agree that a period should be fixed for denunciation, and also that the Convention should last for successive periods of five years; but it seems to me necessary to add that where no denunciation has been made, the Convention should remain in force and should continue to be valid; I cannot find any clause which covers this case.

THE CHAIRMAN (speaking in French). — This is another point which will be considered by the Drafting Committee.

DISCUSSION OF ARTICLE 22

We now pass to Article 22, entitled *Revision*.

The British and French Delegations propose that this Article be omitted. We have an amendment by the Serbian Delegation which proposes to draft Article 22 as follows :

The Advisory and Technical Committee shall present to each General Communications and Transit Conference a report on the working of this Convention, and the Conference shall consider, on the request of a Member supported by four other Members, the desirability of placing on the Agenda of the Conference the question of the revision or modification of the said Convention, in accordance with the conditions laid down by Articles 3 and 7 of the Scheme of Organisation.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As the proposed omission of this Article goes further than the amendment, I should like the British and French Delegations to give us their reasons.

Sir Hubert LLEWELLYN SMITH (Great Britain). — It must be obvious to anyone reading this Article that it is a relic of the earlier draft which presupposed a General Conference on Transit and Communications, holding regular meetings, and therefore it is quite impossible for this Article to be retained after the changes which we have made in the Scheme of Organisation. I have considered whether there is anything that can be put in its place, but it appears to me that, as there will be an Advisory and Technical Committee with the duty of watching what is taking place, drawing up from time to time such reports as are necessary, and submitting them to the Council or the Assembly, and making suggestions for future Conferences, it is quite unnecessary for a period to be fixed here within which it should make these reports. It will be its duty to make such reports as and when circumstances require. This is not a matter which in any way regulates the obligations of the States; it is simply a definition of the duties of the Advisory and Technical Committee, and it surely finds no place in the Convention. If anywhere, it ought to be inserted in the Scheme of Organisation. But the British Delegation moves that it be omitted altogether.

THE CHAIRMAN (speaking in French). — Does this explanation satisfy M. Avramovitch?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Not entirely. We are not dealing here solely with the Advisory Committee, but with the question of revision, and I think that we should apply to this convention the rules which apply to all Conventions,—that is to say that it should be possible to revise and modify it from time to time. There was another idea in Article 22; it was thought that the Advisory Committee would prepare the work and would communicate it to the General Conference, in order that the latter might be informed regarding the application of the Convention. For this reason we thought that this Article would have to be slightly modified, that it should be given a more general and democratic character, in order that anyone might ask the Advisory and Technical Committee to place such and such a subject on the Agenda. It is true, as the British Delegate has said, that after the adoption of Articles 3 and 7 of the Scheme of Organisation, the latter has lost a little of its original value, but for my part I greatly regret that, in the scheme for this Conference, some departure was made from the principles adopted in the General Scheme of Organisation for the Conference. We have changed the contents of Article 3, but in Article 7 we still retain the provision that the unanimous consent of the Members of the Conference is necessary in order to place any question on the Agenda. Moreover, we say that if, during a meeting, the Conference decided by a two-thirds majority only that a question should be considered, that question would not be considered then, but at the next meeting. I think this is going too far. The Serb-Croat-Slovene Delegation has always considered that the same rules should be applied here as were observed at Geneva. As this Article has only been adopted in first reading, I think the Conference may give further reflection to this matter, and may perhaps take a fresh decision in conformity with the spirit of Geneva, which we have invoked more than once.

For this reason I consider that we must not omit Article 22, but that obviously its text must be slightly modified, in order to conform with Articles 3 and 7 of the Scheme of Organisation.

THE CHAIRMAN (speaking in French). — M. Avramovitch will, I think, be satisfied if the Drafting Committee is informed of his remarks.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I beg to thank you, Mr. Chairman. In my view this Article should be in conformity with the scheme adopted at Geneva; I see no reason why our Scheme of Organisation should differ from that of Geneva. When the scheme was adopted in first reading, at the

time of the discussion of Article 7, I was on a Sub-Committee, and the Serbian Delegate was also absent; we could not, therefore, state our wishes at the time. For this reason I venture to express the hope that when the Scheme of Organisation is read a second time, my remarks will be taken into account.

THE CHAIRMAN (speaking in French). — The Officers of the Conference have taken full note of the desire expressed by Mr. Avramovitch.

M. Georges BONNET (France; speaking in French). — The French Delegation desires to state the reason for which it proposed the omission of Article 22,—a proposal which was also in accordance with the wishes of the British Delegate. The reason was that in Article 21 the French Delegation asked that the present Convention should be concluded for a period of five years and should be renewable by tacit consent for successive periods of five years. This being so, it seemed unnecessary to provide for a revision of this Convention, as this revision would in a way become automatic. For this reason we simply asked that Article 22 should be omitted.

THE CHAIRMAN (speaking in French). — Does no-one else wish to speak on the subject of the omission of Article 22?

If no objection is raised, we may consider that the meeting is in favour of the omission of this Article.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think that it should not be omitted, but simply referred to the Drafting Committee. In any case, I must ask the Chairman to put the question to the vote.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Is there not a certain amount of misunderstanding? We all agree with the observations of the Serbian Delegate as to the advisability of referring this matter to the Drafting Committee,—not, however, in connection with this Convention, but for insertion in the Scheme of Organisation. I had understood we were all agreed to omit this Article here.

THE CHAIRMAN (speaking in French). — Is it understood then that Article 22 is to be omitted?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The French Delegate speaks of an extension of the Convention by tacit consent, but I am speaking of the work of revision, and it seems to me desirable to provide for this, and also for the Conference to consider the outcome of the application of the Conventions. In a few years information will be necessary, which the Advisory and Technical Committee will thus have been in a position to obtain. I should therefore like this Article to be not omitted, but simply referred to the Drafting Committee. If after this everyone agrees that it should be omitted, it will be omitted.

THE CHAIRMAN (speaking in French). — In view of the doubts expressed by M. Avramovitch, the Officers of the Conference have no objection to the referring of this Article to the Drafting Committee.

M. VALLOTTON (Switzerland; speaking in French). — I merely wish to second the remarks of the Serbian Delegate, who is right in saying that it would be regrettable to eliminate completely the idea expressed in this Article.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation also seconds the proposal of MM. Avramovitch and Vallotton.

THE CHAIRMAN (speaking in French). — Article 22 is therefore referred to the Drafting Committee, together with Articles 17 to 20.

DISCUSSION OF ARTICLE 23

We now pass to Article 23, to which the Polish Delegation has proposed an amendment. The Polish Delegation proposes to add to this Article a second paragraph as follows :

Each of the High Contracting Parties, however, may, at the time of the signature of the present Convention, indicate which of the two texts it proposes to invoke in the event of any dispute or discussion.

I call upon M. Winiarski, of the Polish Delegation.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation is prepared to give any necessary explanation with regard to this proposal, which it considers to be very important from the point of view of international relations, but which it thinks is also an exceedingly difficult question. If the Conference is of opinion that it would be better to refer this Article, with the Polish proposal, to the Drafting Committee, in order to enable the latter to call upon the Polish Delegate to furnish explanations, the Polish Delegation will be prepared to do so. Otherwise I am quite ready, as I have said, to give all the necessary information here.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Would it not be possible to come to a decision now on this amendment? It seems to me that we are overloading the Drafting Committee with matters which are not really drafting matters at all. There is a clear principle of law as to the interpretation of treaties in two languages, and I am of opinion that it would be most undesirable to depart from that rule in drawing up the Conventions which we are now preparing.

THE CHAIRMAN (speaking in French). — Would the Polish Delegate have any objection if the question were settled this evening?

M. WINIARSKI (Poland; speaking in French). — No; but in that case I should like to speak.

THE CHAIRMAN (speaking in French). — I call upon M. Winiarski, the Delegate of Poland.

M. WINIARSKI (Poland; speaking in French). — If the Polish Delegation has the courage or the boldness to deal with this question, which appears to have been already settled by the Covenant, and by the decisions of the League of Nations, it is because we know that this Conference will interpret our intentions with all the goodwill that they deserve. The Polish Delegation is sincerely desirous of doing what is good and useful, without harming anyone, and, in order to act with complete independence, it has not sounded any of those Delegations which it might consider to be particularly interested in this question. It is impossible to have in two languages two absolutely identical texts, because the peculiarities of each language do not allow any thought or idea to be expressed in exactly the same manner in both languages. Those who have had experience of the constitutional life of States which are not homogeneous from the point of view of nationality,—such as Austria, for example,—know very well that these States have always been led to choose one language and to consider it as official; in this language the authentic texts of the laws are published. Here we have two languages,—English and French. Already disputes have repeatedly arisen owing to discrepancies between the two texts. Perhaps it would be advisable to avoid or to limit the number of cases in which these difficulties may arise in future.

How does the Polish Delegation think that its proposal would be applied? Each Delegation would indicate beforehand which text it proposed to cite in the event of a dispute. It is fully understood that this point of view in no way affects the recognised rights of the two languages. A dispute would be almost impossible between two

Contracting Parties who had adopted the same text. You know indeed that when you work on one text only, and not on two, the ideas which come to you are almost the same. Obviously, certain occasions will arise in which one of the two parties may cite the French text whilst the other bases its case on the English text. In fact, this is already constantly happening. In future the number of these cases in which disputing parties will quote two different texts would, to a certain extent, be mathematically limited, and in the same way the causes of dispute and of dissensions between parties would also be limited. There are examples in which, when a question of interpretation arises, the omission of a comma, the order and arrangement of the words, have sometimes been quoted in support of one claim or the other.

As regards arbitration, everybody knows that if a dispute arises between two States, it is easy to solve it by means of arbitration, and yet preference has been given to the introduction of arbitration clauses, or the conclusion of Arbitration Treaties, in order to a certain extent to bind the parties beforehand not to have recourse to war until all possible diplomatic means have been exhausted. I think that, from the psychological point of view, the same reasons which have reacted in favour of these arbitration clauses will also militate in favour of such an obligation, which in any case is quite optional. In my view, it would be well to offer to those States who so desire, the opportunity of indicating which text they propose to cite in case of dispute. The Polish Delegation is of opinion that it would be of the utmost importance to normal international life, with a view to limiting the number of disputes as far as possible, to offer the States the option of binding themselves in advance.

THE CHAIRMAN (speaking in French). — I would point out to the British Delegate that the Officers of the Conference consider the question too weighty to be settled by a vote. It is true that the Drafting Committee is already heavily burdened with work, but it might take over this small task as well. But I think it is most important that the jurists should be consulted.

Sir Hubert LLEWELLYN SMITH (Great Britain). — If that is the opinion of the Chairman, I will not oppose it.

THE CHAIRMAN (speaking in French). — It is understood then that Article 23 and the Polish Amendment are referred to the Drafting Committee.

PROPOSAL OF THE BRAZILIAN DELEGATE WITH REGARD TO ARTICLE 2

THE CHAIRMAN (speaking in French). — I call upon M. Demetrio Ribeiro, Delegate of Brazil, to speak on an addition to Article 2 which was proposed some time ago.

M. DEMETRIO RIBEIRO (Brazil; speaking in French). — I wish merely to recall the fact that some days ago (1) the Brazilian Delegation suggested that, if the moment were opportune to abolish preferential treatment as regards waterways, it was no less so as regards the abolition of preferential treatment for vehicles, as the essential aim of the Draft Convention on Freedom of Transit is to facilitate transport, and transport presupposes routes and vehicles. We are going to abolish preferential treatment as regards routes. Surely it is at this Conference that we shall also deal with the abolition of preferential treatment as regards vehicles; otherwise I cannot see when we can deal with this subject. When we say this we have no ulterior motive in view, and in this matter Brazil may claim to be one of the most liberal countries. But on this subject perhaps some explanation may be given by the legal experts who are sitting on this Conference, and by those States with great transport enterprises, who will have had greater experience on this subject than countries which, from the point of view of equipment, cannot as yet claim to be contractors for transport.

(1) See p. 58.

When the Brazilian Delegation first gave notice of its proposal, the Chairman suggested that we should begin by ascertaining, by means of friendly conversations, the sentiments of some of the Delegations chiefly concerned. The Brazilian Delegation made every effort to do so, and thinks that it is not acting ashly or impoudently in coming before you to ask that the question which it has raised should be examined by a special Committee composed of qualified persons, in the necessary spirit of complete disinterestedness.

THE CHAIRMAN (speaking in French). — I thank the Brazilian Delegate for his communication; I am indeed of opinion that it would be desirable to submit this question to a Sub-Committee. This Sub-Committee might be composed of one member of each of the following Delegations : Belgium, Brazil, British Empire, Bulgaria, France, India, Italy, Japan, Norway, Paraguay, Persia and Uruguay.

Is there no objection?

This was agreed.

We shall therefore consider the Report of this Sub-Committee next week, and also that of the Sub-Committee appointed to consider the question of enclaved territory—that is to say, the amendments of the Indian Delegation and the French and Portuguese Delegations.

I regret to say that our work is not yet completely finished, and I shall have the pleasure of taking the Chair again next week. I will now close the meeting of the Transit Committee, and will yield the Chair to the President of the Conference.

M. GABRIEL HANOTAUX, PRESIDENT, IN THE CHAIR

THE PRESIDENT (speaking in French). — Before asking you to suspend the meeting for a few moments, I am sure that I am voicing your opinion—and your applause goes to prove this,—by thanking M. Loudon for having presided over your labours with so much diligence and activity, and in such a conciliatory spirit. These are the characteristics of his mind, and it is not surprising that he has thus contributed to the progress of your discussions, and to the successful completion of the Convention on Transit.

Having thanked the President, I will also express his sentiments by thanking the Committee...

M. LOUDON (Vice-President; speaking in French). — That was what I wishep to say, Mr. President. As I observed just now, we have not completed our labours, but we have almost done so, and before separating for the Easter holiday, I should like to tell all these gentlemen how grateful I am to them for the manner in which they have facilitated my task, and indeed how agreeable they have rendered it, so that at heart I now regret exceedingly that we have almost arrived at the end of our labours. We have had to make great efforts to bring our work to a successful conclusion, and you have shown such a sympathetic spirit that, now that we have laid the foundations of the work of the Conference, I must express from this place my very high appreciation of all the Officers of the Conference. The President will excuse me for having spoken, and will allow me to thank you again for the manner in which you have helped me to accomplish my very light and agreeable task.

THE PRESIDENT (speaking in French). — M. Loudon is one of those very rare men who regret to be asked to take a rest. Do not be uneasy, my dear Chairman; we are going to tire you again!

Now that we have completed this stage, if I may use the phrase; we may look back with real satisfaction. Although it is only a short time since our work began, the Conference has been formed, it has completed its Scheme of Organisation, and it has drawn up the main preface to all the Conventions,—the Convention on Transit. In the Scheme of Organisation you have constituted the organisation by which

our Conventions will be applied in the future—that is to say, the Advisory and Technical Committee, according to the idea of the Geneva Assembly; further, you have established the first method for entering upon the settlement of disputes, and this means very considerable progress from the international point of view as regards questions of transport,—progress of which you yourselves are the founders. I think that it is most encouraging for you to be able to point to such important results. They are indeed incomplete; there still remain some questions of wording, some details to be considered by sub-committees. But the results already obtained lead us to hope that the difficulties to be encountered now in the meetings of the Conference will be met in the same spirit, and, in spite of the inadequacy of your President, with the same success.

The meeting adjourned at 6.15 p.m.

THIRTEENTH MEETING OF THE PLENARY COMMITTEE

(Monday, April 11th, 1921, at 5 p.m.)

REPORT OF SUB-COMMITTEE ON SPECIAL CASES IN CONNECTION WITH APPLICATION IN COLONIES
OF CONVENTION ON FREEDOM OF TRANSIT — REPORT OF SUB-COMMITTEE DEALING WITH
BRAZILIAN PROPOSAL — STATEMENT OF CHINESE DELEGATE ON ARTICLE 10 — PROPOSAL
OF SWISS DELEGATE REGARDING DENUNCIATION

The Meeting opened with M. Loudon, Vice-President of the Conference (1), in the Chair.

REPORT OF SUB-COMMITTEE ON CERTAIN SPECIAL CASES IN CONNECTION WITH APPLICATION IN COLONIES OF CONVENTION ON FREEDOM OF TRANSIT

THE CHAIRMAN. — We will now examine the report submitted by M. Bignami, Delegate of Italy, on behalf of the Sub-Committee appointed to examine certain special cases relating to the application of the Convention on Freedom of Transit in the Colonies (2). M. Bignami will now address the Conference.

M. BIGNAMI (Italy; Rapporteur; speaking in French). — As you will remember, during the discussion on the Transit Convention, several Delegates drew attention to the difficulties of applying this Convention to exceptional cases which occur in certain colonies. The Delegate for India had indeed proposed the following Amendment to Article 13 :

As regards the French and Portuguese Settlements in India, it is recognised that their peculiar geographical position prevents the application of the provisions of the present Convention. The conditions of transit in these settlements may be the subject of special agreements between India and the States concerned.

A similar amendment had been proposed by the Delegates of France and Portugal, in the form of a new Article :

It is agreed that the special circumstances of their geographical situation do not permit the application of the provisions of the present Convention to Indo-China, or to the possessions and protectorates of France and Portugal in Africa. The conditions of transit in these possessions and protectorates may, however, form the subject of special agreements between the States concerned.

At the Meeting of March 22nd (3) there was a long and somewhat lively discussion. After the Delegate for India had explained the conditions peculiar to India, which, in his opinion, justified the proposed amendment, the French Delegate pointed out that there were also other cases which also justified it (Cambodia, Indo-China, the

(1) This meeting was held after the 20th Meeting of the Conference in order to hear the Reports of the two Sub-Committees appointed on March 23rd (see pp. 163 to 185); the work of these Sub-Committees could not be finished before the reading of M. Neujean's Report.

On p. 234 will be found a Report by Sir Cecil Hurst, which forms the beginning of the account of the 13th Meeting.

(2) From this meeting on, the references are to the text which forms Section VI of Part IV of the present volume (text prepared by the Drafting Committee based on the text drawn up by the Plenary Committee and submitted to the Conference).

(3) See pp. 152 *et seq.*

Portuguese territories of Kabinda and Guinea, the Spanish colony of Riomuni, and the territory of Whydah, in Dahomey). The Belgian Delegate, while accepting the Indian amendment, declared that he could not support the proposed amendments, and reminded the meeting of the unique situation of the Basin of the Congo, as defined by Convention,—a situation which, in the opinion of the French Delegate, as in his own, should be maintained intact. The British Delegate supported the Indian amendment; the Italian Delegate, on the other hand, after asking if the new wording of Article 10 would not have met this case, stated that he could not vote for a proposal which made exceptions by name, but that he would have voted for a motion conceived in general terms. The Japanese Delegate declared himself in favour of full and entire freedom of transit.

It was then proposed to refer the problem to a Sub-Committee which should be directed to find some formula of a general nature. The Spanish and Chinese Delegates — the latter with certain reservations — supported this proposal. The discussion continued, and as a quorum was not obtained, the question whether the two subjects should be dealt with jointly or separately was postponed until the next meeting.

On the morning of March 23rd, the Delegate for India having withdrawn his objection, the two questions were referred to a Sub-Committee consisting of the Delegates of India, Great Britain, Belgium, France, Portugal, Spain, China, Italy, Japan, Brazil and the Netherlands.

The Sub-Committee met in the Mancomunidad Palace. It appointed as chairman at its first, and as rapporteur at its last meeting the Delegate for Italy now speaking, who is happy to be able to testify to the conciliatory spirit which inspired all its members, and who now feels it a great honour to state what measures the Sub-Committee considered necessary in order to meet the observations which had been put forward. All the decisions of the Sub-Committee were taken unanimously.

(1) *French and Portuguese Settlements in India and Indo-China.* — The Sub-Committee, after having heard the explanations given by the Delegate for India in connection with the French and Portuguese settlements in the Indies, and after having studied the maps, were of opinion that the serious administrative difficulties which would be caused by the application of the Convention, were sufficient to justify an exception. The eight settlements (five French and three Portuguese) are very small in comparison with India, both as regards the extent of their territory and the size of their population. The total area of these settlements is only 1,752 square miles, and their population numbers 843,325. The area of India is 1,773,168 square miles, and its population in 1911 was 315,132,537. The largest settlement is Goa, which has an area of 1,469 square miles and a population of 515,772; but in this case the Portuguese Delegation is satisfied that the conditions of the first paragraph of the proposed Article are fulfilled. Further, the geographical conditions of some of these settlements are peculiar in this respect, that they do not consist of a single area, but are formed of a number of small areas separated and surrounded by the British possessions in India.

In cases of this kind, as with enclaves consisting of a single area, if the provisions of the Convention were strictly carried out, the result would inevitably be an extensive contraband trade; and the Indian Government would consequently be compelled, in order to protect its financial interests, to surround each settlement by a vigilant Customs cordon. Not only would the Indian Government be obliged to incur expense and involve itself in needless difficulties, but the measures taken would probably be entirely ineffective, while no advantage would result for the settlements. At present a certain number of Customs stations on the frontiers of the settlements have been abolished, so that these settlements are now, as regards transit and customs, as favourably situated as the territory of British India which surrounds them.

In respect of Indo-China, the Sub-Committee was unanimously of opinion that regard must be had for the geographical and political situation of this possession, the peculiar conditions of which had been pointed out by the French Delegate. Possessing great length from north to south, Indo-China is, on the other hand, extremely narrow, even at its widest portion, from west to east. Owing to this configuration the country possesses about 6,000 kilometres of frontier, although its total area does

not exceed 300.000 square kilometres. Indo-China does not yet possess the material resources to undertake the permanent supervision of such extensive frontiers in regions which are only being gradually opened up economically, and in which the general conditions of peace and security are still very unsettled. It appeared evident to the Sub-Committee that these peculiar conditions made it impossible to put the Convention on Transit immediately and fully into practice in Indo-China.

After a long discussion, the Committee agreed to propose to the Conference the following Article :

It is recognised that within or immediately adjacent to the territories of some of the Contracting States, there are areas or enclaves small in extent and population in comparison with those territories, and forming detached portions or settlements of other parent States, to which it is impossible, for reasons of an administrative nature, to apply the provisions of this Convention.

The same is the case where a colony or dependency has a very long frontier in comparison with its superficial area, and where in consequence it is practically impossible to provide the necessary customs and police control.

The States concerned, however, shall apply in the case of such areas a régime which will respect the principles of this Convention and facilitate transit and communications as far as practicable.

This Article should be understood as an exceptional measure to meet special cases of French and Portuguese settlements in India and the French possessions in Indo-China. The article is drawn up, however, in such a way as to meet other exceptional cases, if any exist, provided that they present the same characteristics and that the States concerned agree to avail themselves of the provisions of the present Article.

In accordance with the last paragraph of the text adopted by the Sub-Committee, the States concerned shall put into force, in the countries referred to in the Article, a transit régime which as far as possible respects the principles of the Convention. This obligation shall apply especially to such dues as would have a directly injurious effect on simple transit, and which the States concerned shall proceed to abolish as soon as they consider possible. The Chinese Delegation, however, in agreement with the French Delegation, urged that, in the special case of Indo-China, the question of transit with the province of Yunnan should be settled by a special agreement between the two States.

(2) *Railway from Beira to the frontier of Rhodesia.* — The Delegate of Portugal reminded the Sub-Committee of the special situation of the railway from Beira to the frontier of Rhodesia. The Treaty of June 11th, 1891, between Great Britain and Portugal, recognised the right of the latter to levy a tax up to a maximum of three per cent. on goods in transit across the Portuguese territory situated between the east coast of Africa and the English zone of influence. In consequence, Portugal has conceded to a British company the right to construct a railway from Beira to the frontier of Rhodesia. One of the conditions of this contract is that the *ad valorem* tax of 3 % prescribed in the Treaty and levied on goods in transit, should be remitted to the company holding the concession. Under these circumstances, Portugal is compelled to maintain in the Port of Beira the *ad valorem* transit-due of 3 %.

The Sub-Committee, considering the special circumstances resulting from obligations undertaken under the terms of a treaty which remains in force, is of opinion that the transit-due above referred to may be maintained, under the terms of Article 10 of the Transit Draft which has already been approved. The Sub-Committee accepted the statement of the Delegate of Portugal that, although the Colony of Angola is included in the provisions of the Convention on Transit, it is understood that no State can be compelled, in virtue of this Convention, either to construct special railways in order to facilitate transit, or to cede territory for such construction.

(3) *Rights and obligations between territories forming part, or placed under the protection, of a single sovereign State.* — The Sub-Committee also considered a new Article submitted by the British Delegation for insertion in each Convention, laying down that the provisions of these Conventions shall not affect the rights and relations *inter se* of the territories which form part, or are under the protection, of a single sovereign

State, whether these territories, considered individually, are, or are not, Members of the League of Nations.

The Sub-Committee further considered the following proposal of the Chinese Delegation :

It is understood, for the purposes of the Conventions on Transit, Navigable Waterways, Railways and Ports, that in cases where adjoining territories are placed under the sovereignty or authority of one and the same sovereign State, these territories are included within the political frontier of that sovereign State, no matter whether the territories in question are or are not individually Members of the League of Nations.

The Sub-Committee having unanimously recognised that there is nothing in the present Conventions which conflicts with the British proposal, considered it preferable to define this interpretation more exactly by means of a new Article. This Article, which is reproduced below, also covers the case presented by the Chinese Delegation regarding adjoining territories which are placed under the sovereignty or authority of a single sovereign State, and which, as a result of this Convention, are naturally to be considered as forming part of one single State.

It is understood that nothing in this Convention shall be interpreted as regulating rights and obligations *inter se* of territories forming part, or placed under the protection of, a single sovereign State, whether these territories, *considered individually*, are, or are not, Members of the League of Nations.

(4) Finally, the Chinese Delegation drew the attention of the Sub-Committee to a certain number of questions relating to the application of the Convention on Transit to foreign ports, ceded on lease, which are situated on the borders of China. These ports are of limited extent with a very small population, and are under the Chinese customs system.

The discussion shows that the desire of the Chinese Delegation would be completely satisfied by the introduction into the Report of references based on the passage on page 39 of the Green Book which defines the word *authority* with reference to territories in which authority is shared, and also on the passage on page 39 (1) which defines the exact meaning of the word *frontier*.

The Sub-Committee therefore recommended the insertion of these passages in the report (2).

It is understood that the text of these articles will be referred to the Drafting Committee.

THE CHAIRMAN (speaking in French). — I have to thank M. Bignami for this Report, which gives us a very clear idea of the question.

We have now to consider and to adopt the two new Articles. The first which M. Bignami has read to us is drawn up as follows :

It is recognised that within or immediately adjacent to the territories of some of the Contracting States, there are zones or enclaves, etc.

This Article seemed to me a little confused, and I took the liberty of discussing it with M. Reveillaud, who is pre-eminently a jurist in French Law, and we thought that certain modifications could with advantage be made in the text. I will read you the text which we have prepared, and we can then send it for the consideration of the jurists, who, either immediately or, at latest, this evening, will draw up a final text which could be voted upon to-morrow.

The following is the text which I propose :

In view of the fact that within or immediately adjacent to the territories of some of the Contracting States, there are areas or enclaves small in extent and population in comparison with those territories, and forming detached territories or settlements of other parent States, to which it is impossible, for reasons of an administrative nature, to apply the provisions of

(1) See p. 287.

(2) Report of the Plenary Committee to the Conference, submitted by M. Neujean (Belgium). See p. 208.

this Convention, it is agreed that these provisions shall not be applied to the above-mentioned areas or enclaves.

The same is the case where a colony or dependency has a very long frontier in comparison with its superficial area, and where in consequence it is impossible to provide customs and police control.

The States concerned, however, shall apply in the case of such areas a régime which will respect the principles of this Convention and facilitate transit and communications as far as practicable.

Has anyone any observation to make upon this new Article?

Sir Louis KERSHAW (India). — I wish to make clear that, in accepting this Article, the Indian Delegation understands that it will be possible—and this matter has been explained to the Committee—to levy customs duty on goods arriving in British India, and to control illegitimate trade. There is no intention whatever of restricting or impeding legitimate trade with these settlements. As I explained to the Conference and to the Sub-Committee, the difficulties we wish to surmount are entirely of an administrative character. I wish this to be entered in the Minutes.

THE CHAIRMAN (speaking in French). — I think no-one will object to the introduction of this statement into the Minutes. As regards the translation of this Article into English, Sir Cecil Hurst and M. Reveillaud will perhaps be able to come to an agreement on the matter, and the translation will subsequently be read.

M. HALEWYCK (Belgium; speaking in French). — I have asked to speak in order to make clear page 5 of M. Bignami's lucid and excellent report. I refer to the last paragraph of this page, which reads as follows :

In accordance with the last paragraph of the text adopted by the Sub-Committee, the States concerned shall put into force, in the countries referred to in the Article, a transit régime which as far as possible respects the principles of the Convention. This obligation shall apply especially to such dues as would have a directly injurious effect on simple transit and which the States concerned shall proceed to abolish as soon as they consider possible.

In order to avoid any confusion, I should like to define more closely the purport of this passage. It was definitely understood in the Sub-Committee that this passage shall clearly indicate that transit dues which are now in existence shall in no case be increased, and that no new dues may be established in the territories referred to in the amendment.

Though I considered it desirable to make this statement in order to make clear the meaning of the paragraph in question, I do not ask for the Report to be changed. It will be enough if my words are recorded in the Minutes.

M. BIGNAMI (Italy; speaking in French). — I do not think this precision is necessary, for as soon as the States concerned proceed to abolish the dues in question, as soon as they consider possible, it is understood that they cannot increase them. But I see no objection to the Belgian Delegate's desire being taken into consideration.

M. HALEWYCK (Belgium; speaking in French). — I still think that this precision is necessary, and I should have no difficulty in justifying my point of view. But as the Rapporteur, in his reply, has signified his complete agreement as regards the scope of the paragraph and of the decision which has been taken, I do not press the point, as I do not wish unduly to prolong this exchange of views.

THE CHAIRMAN (speaking in French). — We may now pass to the new Article which has been proposed to the Sub-Committee by the British and Chinese Delegates. The Article in question reads as follows :

It is understood that nothing in this Convention shall be interpreted as regulating rights and obligations *inter se* of territories forming part, or placed under the protection of a single sovereign State, whether these territories *considered individually* are, or are not, Members of the League of Nations.

Does anyone wish to speak on this Article?

I put it to the vote.

The Article was adopted.

I think there is no objection to the proposal of the Sub-Committee recommending the introduction into the Report of the references based on the passage on page 39 of the Green Book (1) which interprets the word *authority* in relation to territories on which authority is shared, and also on the passage on page 39 which defines the exact meaning of the word *frontier*.

This was agreed.

REPORT OF SUB-COMMITTEE ON BRAZILIAN PROPOSAL

THE CHAIRMAN (speaking in French). — The Report of the Sub-Committee on the Brazilian proposal (2) reads as follows :

The Sub-Committee has held two meetings, at which the Brazilian Delegate made a full statement of his point of view. Every aspect of the question was discussed. We desire to point out that since the appointment of the Sub-Committee the difficulties raised by the Brazilian Delegate have been partly obviated, owing to the adoption, by the Committee on the Navigable Waterways Convention, of a paragraph reading as follows :

The State under whose sovereignty or authority a port is situated, may withdraw the benefits of the preceding paragraph from any vessel, if it is proved that the owner of the vessel systematically discriminates unfavourably against the nationals of that State, including companies controlled by its nationals.

After careful investigation, the Sub-Committee cannot recommend the insertion of such a Clause in the Convention on Transit; inserted in this Convention, its consequences would be much more far-reaching. But the Sub-Committee is unanimously of opinion that it would be desirable to insert in the Report (3) a paragraph to the following effect :

The Brazilian Delegate has drawn the attention of the Conference to the fact that the two questions of freedom of communications and transit and equitable treatment for commerce are intimately connected. Article 23 (e) of the Covenant mentions with regard to both of these questions that they are to be made subject of general conventions. Moreover, the Brazilian Delegate points out that so long as no convention on the equitable treatment of commerce has been concluded, the task imposed upon Members of the League of Nations by the above-mentioned provision of the Covenant is only half accomplished; in the meantime it might be difficult to induce certain States to continue to grant transit facilities to countries which in their view would not accord equitable treatment to their commerce. The Conference considered that it was not possible to introduce into the Convention on Freedom of Transit any provision regarding equitable treatment for commerce, partly because this subject belongs to the domain of another technical organisation of the League, and partly because, so long as no General Convention has been concluded on this subject, there is no generally accepted principle to determine what constitutes equitable treatment for commerce.

Further, the Conference considers that, even when another convention on the equitable treatment of commerce has been adopted, the question of the refusal of transit facilities as a "sanction" for the purpose of ensuring the execution of this other convention, should be maturely considered, particularly on account of the harm which might result for other Contracting States from measures of reprisal taken solely as sanctions against any particular State,—for example, the exaction of certificates of origin. After considering this question as a whole, the Conference decided to recommend the Council to instruct the Economic Section of the Provisional Economic and Financial Committee in agreement with the Advisory and Technical Committee for Transit and Communications, to consider the question which has been raised by the Brazilian Delegate, and to submit a report on the conditions and limits within which it would be desirable for the League of Nations to authorise the refusal or restriction of transit facilities as measures for the purpose of ensuring the application of any convention which might be concluded regarding equitable treatment for commerce, or *vice versa*.

(1) See p. 286.

(2) See p. 184.

(3) Report of Plenary Committee to Conference, submitted by M. Neujean.

THE CHAIRMAN (speaking in French). — Moreover, the Sub-Committee also considers that the attention of the Council should be particularly drawn to this question, with a view to taking immediate steps in the sense indicated. The Sub-Committee further recommends that the following Memorandum, which was submitted to it by the Brazilian Delegate, and which refers to the application of the Draft Convention which the Conference is preparing, should be transmitted to the Council for its information.

BRAZILIAN PROPOSAL REGARDING THE APPLICATION OF THE DRAFT CONVENTIONS
WHICH ARE BEING DRAWN UP BY THE CONFERENCE

We have a constitutional charter by which we are governed; it is the Covenant.

Let us refer to it, for a moment, and observe that our fundamental statute lays down that : The Members of the League will make provision to secure and maintain, not only equitable treatment for commerce, but also freedom of communications and of transit.

“Freedom of transit, freedom of communications, equitable treatment for commerce”,—these are three integral terms of a single problem, as it is stated by the Covenant. They are the component parts of an indivisible whole. They can be considered separately, but only on the condition that no attempt is made to draw a hard and fast line between them in an arbitrary manner, as if the problems dealt with were entirely distinct. It is upon the homogeneous nature of its terms that the unity of the problem is based.

But, following the example of the Council of the League of Nations, which was influenced by the initiative of the Committee entrusted with the duty of drawing up the Agenda for the Conference, we are working out Draft Conventions on Freedom of Transit and Freedom of Communications, without taking any count of equitable treatment for commerce between Members of the League of Nations. In practice, this means that the nations whose international transport industry is still comparatively undeveloped, are asked to commit themselves to a system of exemptions which will work out chiefly to the advantage of those who possess ample means of transportation. They are asked to forego at once certain natural advantages which they formerly enjoyed, without obtaining anything in compensation.

By doing this, we are deviating from the course which would direct the vital forces of all countries towards co-operation, which is the creator of the wealth of the community. Is it desirable to change our goal, under the pretext that the task entrusted to this Conference is limited to the consideration of a portion only of Article 23 (e) of the Covenant? Would it not be wiser to consider the possibility of adding to the Agenda of the Conference a new scheme for completing the study of the problem which is defined in the Article in question?

Is it necessary to repeat that the Technical Organisations which were created by the Assembly of the Nations, at Geneva, are empowered to make additions to the Agenda during the course of a Conference, and to decide upon the subject of these additions, it being understood that such proceedings would only have a provisional value, until they are submitted to the judgement of the Council?

If, however, we agree as to the desirability of safeguarding the equitable treatment of commerce, we are not without authority to do so, if we act in complete agreement with the spirit of Geneva. Indeed, we may even add to the Agenda proposals for a new discussion with a view to taking measures for this purpose. But this procedure is no longer possible for us at this advanced stage of our labours; moreover, the problem to be solved would be immense, and it would not be an easy matter to collect all the necessary information and material. It must therefore be postponed. It will be the duty of the Assembly of the League of Nations, at its next meeting in September, to decide whether this matter shall be referred to another Conference like this one, or submitted to some other technical organisation. In any case, until the provisions regarding the equitable treatment of commerce are put into practice, as provided for in the Covenant, the Conference should not fail to adopt certain precautionary measures which are called for by these needs. This would have the further effect of avoiding a controversy, perhaps even a fundamental controversy, as regards form, and perhaps even as regards substance, in connection with the application of Article 23 (e),—a controversy which would not be likely to facilitate the ratification, by the States concerned, of the Draft Conventions on Transit and Communications.

These are the reasons which have given rise to the Brazilian proposal, the text of which has, after due consideration, been drawn up as follows :

The exemptions provided for in the Draft Conventions drawn up by the Conference shall not take effect in the territory of any of the Contracting States in the case of vessels, ships and other means of transport by water, which carry goods destined for, or belonging to, nationals of the State concerned if such goods are not admitted, under the most favourable conditions allowed, in similar circumstances, to any other goods—including those destined for, or belonging to, persons of the same nationality as the said vessels, ships or other means of transport.

Finally, the Brazilian Delegation ventures to suggest that, if the Conference agrees, the Council of the League should be informed of the matter as soon as possible through the usual channel.

Sir Hubert LLEWELLYN SMITH (Great Britain). — With regard to the last paragraph of the Report of the Sub-Committee on the Brazilian proposal, the British Delegation has requested a small alteration to which, as Rapporteur, I consent. We suggest the substitution for the words *should be transmitted to the Council for its information* of the words *should be included with the documents transmitted to the Council as presenting the case for his proposal*. With that addition, the Report was adopted unanimously. It not only implies the insertion of a new paragraph in the Report of the Conference, but is practically a proposal to transmit this passage from the Report to the Council of the League.

THE CHAIRMAN (speaking in French). — I think that the Conference will accede to the wishes of the Sub-Committee, and will accept the proposed suggestion that this paragraph should be inserted in M. Neujean's Report.

The text of the Report of the Sub-Committee on the Brazilian proposal is therefore adopted with the proposed change in the last paragraph.

STATEMENT OF CHINESE DELEGATE WITH REGARD TO ARTICLE 10 OF TRANSIT CONVENTION

M. TSANG-OU (China; speaking in French). — With reference to the first paragraph of Article 10, the Committee has asked me to furnish some explanations regarding this question, which is a somewhat complicated one.

We have before us two conventions,—that on Navigable Waterways and that on Freedom on Transit. Both these conventions are based upon the principle of equality and liberty. In China, on the other hand, we have two régimes which differ in the following way. We possess ports which we call *treaty ports*, and ports which we call *closed ports*. The *closed ports* are those in which navigation and commerce are reserved for nationals only. The *treaty ports* are those to which foreign vessels are admitted without discrimination, even if they are carrying on coastal trade of any kind.

Amongst the forty-four States Members of the League of Nations, some ten have signed commercial treaties with China by which they enjoy a special régime. Paragraph 1 of Article 10 provides for the maintenance in force of existing conventions. I know that in this Conference, which is an exclusively technical one, we must not raise political questions. Allow me, however, to put a case. If, acting upon the principles laid down in Article 10, paragraph 1, we maintain in force the existing conditions, countries whose maritime traffic in the *treaty ports* is governed by special conditions may still enjoy the same treatment so long as the revision provided for in Article 10, paragraph 2, has not taken place. As regards States which have not hitherto concluded commercial treaties with China, they will be placed under the régime of the present Convention in all ports, both *treaty ports* and also those which may be opened in future. To take an example—let us suppose that England sees that advantages may be obtained from applying only one régime to the present *treaty ports* and the new open ports; she will then have to conclude new agreements based on the terms of Article 10, paragraph 2, in order to unify these different régimes. I am not now, be it noted, making a proposal on behalf of my Government. I merely wish to have an interpretation which I can insert in my report. It is not enough for me to furnish explanations regarding the present Convention or the Convention on Navigable Waterways; I must point out the difficulties, from the political point of view, of applying these conventions. If I am unable to say in what sense Article 10 will be interpreted, my Government will be placed in a difficult position and will not know whether it should ratify the Convention. Thus, Article 10, paragraph 1, maintains in force the existing conventions, and paragraph 2 provides for possible revision. I should like the Conference to tell me whether I am interpreting Article 10 in the sense in which the Conference itself understands it; it would serve as a basis for the Chinese Government to maintain the existing conventions as regards transit in paragraph 1. Paragraph 2 would come into play later if the Chinese Government were to encounter other difficulties as regards the application of the Convention,—difficulties which would be settled either by the Council or the

League of Nations or through diplomatic channels. I should like the Conference to say whether I can introduce this interpretation into the report which I shall send to my Government.

THE CHAIRMAN (speaking in French). — Would it not satisfy you if this appeared in the Minutes?

M. TSANG-OU (China; speaking in French). — No, I cannot submit this Convention for ratification by my Government without explanation. Neither can I, on my own authority, give an explanation of Article 10 unless my interpretation has the support of the Conference.

THE CHAIRMAN (speaking in French). — Would you be satisfied if it were inserted in M. Neujean's Report?

M. TSANG-OU (China; speaking in French). — I should be perfectly satisfied, but I should not like there to be any misunderstanding. My interpretation of paragraph 1 of Article 10 should not have the effect of weakening the right of revision provided for in paragraph 2 of the same Article. As this is a technical Conference, I will leave aside the diplomatic point of view, which is dealt with in paragraph 2.

THE CHAIRMAN (speaking in French). — Will M. Neujean insert that in his additional report (1)?

M. NEUJEAN (Belgium, Rapporteur, speaking in French). — I am quite prepared to do so, but the Chinese Delegate asks for an interpretation, and I do not think I am authorised in the name of this Conference to interpret the ruling of the Convention. The Conference itself must decide exactly what interpretation is to be inserted.

[M. TSANG-OU (China; speaking in French). — That is what I wish.

THE CHAIRMAN (speaking in French). — The Conference must give its decision.

M. TSANG-OU (China; speaking in French). — It is the interpretation of the Conference for which I am asking. It is the Conference which must decide as to the wording.

THE CHAIRMAN (speaking in French). — We might place this question before the jurists, who will find a wording; we could then submit this wording to the Conference to-morrow and ask it for its decision thereon.

Sir Hubert LLEWELLYN SMITH (Great Britain). — So far as I was able to follow the explanation of the Chinese Delegate and the Document he has circulated, what he has said seems to be perfectly correct, but I entirely agree with the Chairman that it is a matter which the jurists should consider before we insert it in the Report. M. Tsang-Ou suggested in his speech that questions arising from Article 10 should be decided either by the Council or through diplomatic channels. That is not a method we have adopted for deciding questions. If a question arises under Article 10 or any other Article, it will have to be settled in the manner prescribed for disputes between States, and that is neither by diplomatic means nor by the Council.

M. TSANG-OU (China; speaking in French). — It is not disputes that I anticipate, but the difficulties of applying Article 10, paragraph 1. Let me take a striking example. Our port of Shanghai is open to international commerce; beside it is a highly developed port open to Chinese commerce. The English and French have not the right to come and trade in this latter port under the régime of their treaties of commerce, as they

(1) Report of the Committee to the Conference, submitted by M. Neujean (see Part III, pp. 201 *et seq.*, reading and discussion of this Report).

do at Shanghai. Under the terms of the régime established by the new conventions they will only be able to come and carry on transit traffic there, in the same way as the Roumanians and Serbians, for example, who have not concluded earlier treaties. Thus, in the *treaty ports*, existing conditions are maintained as regards transit, in accordance with Article 10, paragraph 1, until a fresh decision is taken (revision as provided for in paragraph 2). As regards those former closed ports which will now be opened, it is only the régime provided for in the new Convention which is applicable to *all*. If a country which has concluded an earlier treaty finds it more advantageous for the new régime to be applied in the *treaty ports*, it will have recourse to revision through diplomatic channels, basing its action on paragraph 2 of Article 10. These are difficulties which will not occur immediately, but which will certainly arise in the future.

Sir Hubert LLEWELLYN SMITH (Great Britain). — This explanation seems to me very clear.

M. TSANG-OU (China; speaking in French). — I again ask the Conference to tell me whether I am in agreement with it as regards the interpretation of Article 10, paragraph 2.

THE CHAIRMAN (speaking in French). — Before asking the opinion of the Conference, I propose that M. Tsang-Ou should arrive at an agreement with the jurists and give us the result of this agreement to-morrow afternoon.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — The Chairman says that the question will be dealt with to-morrow afternoon. The Chinese Delegate, for his part, asks me to insert this text in my Report, and this appears to me a legitimate request. But I am to read my Report to-morrow afternoon also, and I shall have no time to do what is necessary, unless it is a mere matter of an addition.

THE CHAIRMAN (speaking in French). — It will only involve introducing the text into your Report, whereas it seems to me that this question is too serious for us to settle immediately without taking the opinion of the jurists. It is therefore decided that M. Tsang-Ou will come to an understanding with these gentlemen.

PROPOSAL OF SWISS DELEGATE REGARDING DENUNCIATION

M. VALLOTTON (Switzerland; speaking in French). — I have been taken somewhat unawares, as I intended, before submitting to you the question with which I wish to deal, to submit it unofficially to some of the jurists of the Conference.

Hitherto questions of the kind which form the subject of the Draft Convention, such as, for instance, the régime of international rivers, were regulated by means of conventions; which, as you know, always implied recognition of the rule *rebus sic stantibus*, and these conventions remained in force until the situation which led up to the signing of the Convention came to an end. We are substituting for this system that of conventions open to denunciation,—a system which obviously has its advantages, but to which objections may also be raised. The Convention may be denounced by one of the Contracting Parties, even though the situation which gave rise to the Convention remains in force. When we come to consider the Convention on the Régime of Navigable Waterways, amongst others, the Conference may possibly adopt certain proposals which will be submitted to it, and the object of which is (I neither criticise nor approve these proposals; I merely quote them in passing) to establish a system of international co-operation, particularly as regards works of upkeep and improvement. As regards certain works this international co-operation will necessitate an understanding. As one Delegate has already stated on several occasions, this will perhaps involve the State which has undertaken the work in fairly extensive obligations. We must therefore be quite clear as to the mutual engagements which we are to undertake. The Swiss Delegation wonders whether

under this system we have provided for the consequences of denunciation as regards a State which, *bona fide*, undertakes extensive technical and financial obligations towards other States. It seems to me that if we do not wish to lay ourselves open to this justifiable criticism on the part of the Governments which have sent us here, it is essential to introduce into these Conventions a text which will not leave room for any subsequent discussion on the consequences of denunciation. I proposed to some of the experts here the following text, which I give you for what it is worth and which I think is by no means beyond criticism. It would involve introducing a general article into our Conventions, worded as follows :

Those rights and obligations which exist at the time of the conclusion of the present Convention and which may be affected by the latter—they may be detailed here, and either restricted, abolished or increased—shall be revived by the fact of the denunciation of the present Convention...

This is the first principle. There is a second one which appears to me of importance :

Such denunciation shall not, save by agreement to the contrary, have the effect of freeing a State from bilateral engagements which may have been undertaken under the authority of the above-mentioned Convention. Such State shall be bound to carry out its engagements to the full.

I consider that it is too early to begin a discussion of this text now. I propose that it be circulated in order to allow time for reflection.

THE CHAIRMAN (speaking in French). — Would this mean adding an article to the Convention itself?

M. VALLOTTON (Switzerland; speaking in French). — Yes, but it refers particularly to the Convention on Navigable Waterways, which introduces into the question of works a new principle which I, for my part, consider to be open to dispute,—the principle of participation in works of improvement involving long term engagements in respect of upkeep,—engagements which indeed may even last beyond the duration of the Convention itself. There is in this a danger against which all those must be prepared,—and I think that this includes all the members of the Convention,—who wish to fulfil their engagements and who also require that others should do the same.

THE CHAIRMAN (speaking in French). — As M. Vallotton's proposal is of a formal nature, I propose that it be referred to the Drafting Committee.

M. VALLOTTON (Switzerland; speaking in French). — I introduced it to-day because it appeared to me necessary to consider whether it should be introduced everywhere or only in the Convention on Navigable Waterways.

M. PERIETZIANO (Roumania; speaking in French) — I think that the question raised by M. Vallotton is not merely a question of drafting, as it involves a principle which I am certain will later be contested. I will not say now that I am opposed to it, because I have not considered the question, but I think that it should be referred to the Committee which is dealing with navigable waterways. The Drafting Committee can only prepare a wording which will exactly express the intention of the Conference, but we are faced here with a proposal of a fundamental nature, and this proposal should therefore be referred to the Committee on Navigable Waterways. Indeed I cannot understand why it is brought before this Committee, which is not dealing with navigable waterways.

M. BIGNAMI (Italy; speaking in French). — I fully support the Roumanian Delegate's statement, and I ask that this important question shall be referred to the Committee on Navigable Waterways.

THE CHAIRMAN (speaking in French). — Does M. Vallotton agree to consider his proposal as referring particularly to navigable waterways? If so, does he agree with the Roumanian and Italian Delegates that his proposal should be referred to the Committee on Navigable Waterways?

M. VALLOTTON (Switzerland; speaking in French). — It is very difficult to reply to this question unless my proposal has been considered by some of the jurists. There are two different ideas in the text, and as I do not consider myself qualified to arrive at a decision, I should prefer more competent persons than myself to enlighten me in this matter.

THE CHAIRMAN (speaking in French). — In that case I will repeat my proposal to refer this question in the first place to the Drafting Committee, and to-morrow we will see whether it should be submitted to the Committee on Navigable Waterways.

M. AVRAMOVITCH (Serb-Croat-Slovene State speaking; in French). — The shortest and best plan would be for M. Vallotton to come to an understanding with the jurists as regards the grounds of his amendment, and for the amendment to be then submitted to the Committee on Navigable Waterways, as these gentlemen have proposed. But do not send it to the Drafting Committee; that would mean obtaining a preliminary verdict of an official character, and this we wish to avoid. M. Vallotton may come to an agreement with the jurists, but in a private capacity.

THE CHAIRMAN (speaking in French). — I can assure you that there is no question of prejudging anything. Let us refer the matter to the jurists instead of the Drafting Committee,—the Officers of the Conference would be only too pleased. Let M. Vallotton come to an understanding with the jurists, and to-morrow we shall be able to make a proposal.

M. CARACOSTEA (Roumania; speaking in French). — Will the question be referred to the Committee on Waterways?

THE CHAIRMAN (speaking in French). — We will see later if it will have to be referred to the Committee on Navigable Waterways only, or to the Transit Committee as well.

Does anyone else wish to speak?

The Officers of the Conference think that under the circumstances it would be better not to take a vote. This will be done at the earliest to-morrow afternoon.

The meeting adjourned at 7 p.m.

PART III

REPORT

OF THE

PLENARY COMMITTEE

TO THE CONFERENCE

DISCUSSION AND ADOPTION

OF THE

CONVENTION

ON

FREEDOM OF TRANSIT

PART III

REPORT

PLENARY CONFERENCE
OF THE CONFERENCE

DIRECTORIAL AND LEGISLATIVE

COMMISSION

REPORT OF THE COMMISSION

NINETEENTH MEETING OF THE CONFERENCE

(Saturday, April 9th, 1921, at 5 p.m.)

REPORT OF PLENARY COMMITTEE ON TRANSIT — DISCUSSION OF ARTICLE 1

The Meeting opened with M. Hanotaux, President, in the Chair.

THE PRESIDENT (speaking in French). — Gentlemen, the agenda for to-day includes the examination of the Draft Convention on Freedom of Transit. I will first call on M. Neujean, the Belgian Delegate, and Rapporteur on this subject, to read us his Report.

REPORT OF PLENARY COMMITTEE ON TRANSIT

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — Gentlemen, I will begin by expressing my thanks to the Conference for the honour which it has done me in entrusting me with the preparation of a Report of such importance. I regard it as an act of homage to the gallant and industrious nation which I am privileged to represent. I offer you my cordial thanks.

It was a wise inspiration which led the Council and the Assembly at Geneva to constitute a Committee for the purpose of drawing up Conventions on the régime of transit, of navigable waterways, of ports, and of railways, and to convene a Conference at Barcelona to discuss these Conventions. There is no problem which possesses greater interest for the whole Comity of nations; this is particularly true in regard to transit. Facilities for trade, the multiplicity and convenience of transport routes are among the most potent factors of civilisation. The close similarity between the commercial legislation of the various States of both continents is a fact familiar to all who make a study of comparative law, and this similarity is becoming more marked every day. It is a phenomenon due to the constantly increasing development of commercial transactions between peoples of different race and nationality. The density of population in certain parts of the globe, the diversity of products and of natural resources, involve a constant increase in transactions, and, as these extend, they draw the nations together and create between them ever closer bonds in the shape of mutual aims and interests.

The League of Nations once endowed with life, its first duty was to endeavour to lay down certain definite but at the same time elastic principles calculated to simplify international relations. This difficult but noble task has been entrusted to you by the Assembly at Geneva. If you succeed in bringing into being the Draft Convention of which the main lines were sketched by the distinguished men who took part in the preparatory work at Paris, and which is now laid before you by your Committee in an amended and perfected shape, you will have the profound satisfaction of having accomplished this task worthily and wisely. For my part, I consider myself honoured in having contributed, however little, to this work, for I am convinced that it is destined to be the herald of a new era.

I am one of those who believe in the League of Nations. It is the League which is going to establish the reign of peace and an era of material and moral well-being throughout the world. Whether that be sooner or later will depend upon a generation younger than mine. There are some people who smile at the idea of the League of

Nations, who deride it as a chimera of pacifist dreamers. I ignore these sorry minds; I pity them. Scepticism will never lead to progress; it condemns to inaction. Progress can only be achieved by the united efforts of mankind. Why should not the principle of mutual help, which has proved of such inestimable benefit to individuals, be adopted by communities in their dealings with one another? The interests of mankind form one united whole, and the application of this established truth by many of the nations represented here has already borne fruit. That is the conquest of yesterday. As with individuals, so with nations. Countless interests in common, closer and ever-increasing intercourse, are daily making them more dependent on each other. The nations are wiser now, and better able to appreciate the community of interests which links them together; the appalling upheaval which has shaken the world to its foundations has taught them a rude lesson. When these disasters have been repaired, and everything has been restored to a normal footing, let us hope that they will make up their minds to meet together in conferences such as this, and seek a joint solution for all international questions likely to produce serious disputes. That will be the conquest of to-morrow. Alas! we have not yet attained this ideal, although the present Conference is a step in the right direction. Difficult questions, involving local prejudices and interests, have already been solved in a spirit of conciliation which speaks for itself.

No doubt certain people, of whom I am one, considered that the *Green Book* had been wisely conceived, and contained a just and even moderate application of the principles of liberty and equality which should prevail in these matters. They will no doubt regret that still further modifications have been made in the draft, but they can console themselves by reflecting that progress is not achieved in a day, and that the good seed will eventually bear fruit. Article 23 of the Covenant of the League of Nations has emphasised in definite terms the importance of transit. The ideal state of affairs would be the assimilation of the conditions applicable to transit traffic and those applied to internal traffic. If the principle were admitted that the existence of political frontiers must not be used by a State as a pretext for exacting economic tribute from its neighbours, or for arbitrarily diverting the normal flow of commercial traffic, a prolific source of conflict would be eliminated.

The provisions to which my Report refers contain, in their new form, thirteen articles. Taken as a whole, they constitute what the Drafting Committee has accurately termed *Regulations for Transit*. The provisions which deal solely with procedure, and those regarding the putting into force of the Conventions, which were referred to the Drafting Committee, have been detached. The Drafting Committee will submit to you revised drafts on these subjects; they will form a kind of setting for the technical regulations which alone form the subject of my Report.

The titles, which in the *Green Book* draft were placed at the head of each Article, no longer figure in the present draft. The jurists have not been able to find any heading which would convey adequately the main principle contained in each article. They have, therefore, thought it preferable to do without them. Such headings, moreover, are only of use in connection with the preliminary consideration of legislative measures. If they were allowed to remain, there would be a risk of their occasioning serious errors of interpretation. In view of these considerations, your Drafting Committee has decided to propose the omission of the headings.

In approaching the detailed study of these Draft Regulations, let us first note the following general considerations :

(1) Although the principle of freedom of transit has been laid down, the present Convention applies solely to commerce and transit by rail and water; the almost insurmountable difficulties which would have been involved by its application to other means of communication, —i.e., air transport and ordinary roads,—have prevented their inclusion.

The word *transit* is employed in the Regulations to indicate both *transit by rail* and *transit by navigable waterway*, or again, *transit by a combination of these methods*. It includes occasions where, at the junction of a railway and a waterway, recourse to some other means of transport is necessary for a short distance, in order to make the connection. It was indeed hardly necessary to state this, for it is upon common sense that we must chiefly rely in interpreting texts. Who, indeed, would argue, for instance,

that goods unloaded from a vessel on to a truck by means of a crane should be deprived of the benefits of the Convention, because a crane is neither a railway nor a vessel?

(2) The Convention does not prejudice the sovereign rights of the States across which transit takes place, nor the executive powers conferred upon them by their own legislation as regards transit routes. In the French text, the expression *instruments de transport* has been substituted for the words *moyens de transport*, which figured in the original text. It was found desirable to avoid using this latter expression in two different senses, at a distance of only a few lines. The Drafting Committee, in making this alteration, acted in accordance with a view which I expressed at the beginning of the general discussion. *Instrument*, moreover, conveys better the idea of a *vehicle which transports*, which is the meaning to be conveyed here; whereas *moyen* signifies more exactly the route by which transport is effected,—for example, rail, navigable waterway, road or air.

(3) The Convention does not create a super-State. In carrying out the Convention each Contracting Party is free to take such measures as are necessary and as are in conformity with its own legislation. Disputes alone are, if need be, to be submitted to the League of Nations.

(4) The Convention confines itself to regulating the right of using transit routes; it does not place upon States across which transit takes place any obligation to construct new routes, or to improve those already in existence; nor does it oblige them to accord to transit traffic priority over their internal traffic; it even recognises that, *in exceptional cases*, internal transport which is of *vital* importance to a country may enjoy a right of priority.

(5) As regards transit, the Conference has decreed equality of treatment in all the Contracting Countries. At the same time it does not intend to hinder free competition, provided the latter be carried on fairly; indeed, if the Conference had had such an intention, it would have been powerless to carry it out. So much for general observations. Let us now consider the details of the draft.

In Articles 1, 2 and 3, your Committee has omitted any mention of *mails and postal parcels*. This does not mean that mails and postal parcels are excluded from the benefits of freedom of transit; the reason is that they have already been dealt with by the recent Madrid Convention. It was necessary to avoid the divergencies of interpretation and the conflicting decisions which might result from the existence of two different conventions dealing with the same question.

The word *baggage* has been introduced in order to indicate that packages carried in connection with passenger traffic, and not usually comprised in the term *goods*, are also subject to the provisions of the Convention. The Serb-Croat-Slovene Delegation had proposed the omission of the word *vessels* in the first articles, on the ground that vessels could properly only be dealt with in the Convention on Freedom of Navigation, and not in the Convention on Freedom of Transit, and that the proper time to consider this question would be during the discussion of the Convention of Navigable Waterways. In the words of M. Avramovitch :

There is no question of freedom of transit in connection with vessels,—they are in a sense an actual obstacle to transit. In the first place, every vessel flies its own flag, implying that it is under the protection of the country whose flag it flies. In the next place, it has its own captain, and, thirdly, it can go anywhere, whereas the means of locomotion which are used for transit traffic—wagons, coaches and locomotives—do not possess these three characteristics. They have no flag and no commander of their own, and their movements are restricted to definite rail routes. All this is a proof that the present is not the time to discuss the question.

This amendment was rejected by your Committee.

The Drafting Committee added a paragraph to the text of Article 1. It adopted the expression *traffic in transit*, which will take the place in subsequent Articles of the words *persons, luggage, etc.* Thus useless repetition will be avoided, and the wording of all the technical regulations will be simplified.

A revision of the text relating to *territorial waters* was found to be essential, in order to show clearly that the principle of freedom of transit cannot be rendered nugatory by the introduction of restrictive measures in territorial waters.

By the expression *breaking bulk*, we do not mean in any way to imply the idea of any re-packing of the goods.

The attention of the Committee was drawn to the passage in the *Green Book* which states that *produce of fisheries* coming from extra-territorial waters, and landed in a port, shall not be considered as being in transit across the territory of the State to which the port belongs, even if they are destined for another country. In the former country they will be treated as goods for export.

The countries across which transit takes place retain the right to impose *fiscal charges* in connection with any transactions taking place in respect of goods in transit, either during the journey, or in the event of their deposit in a warehouse. This provision is not actually contained in the text of Article 3, as the French Delegation, which proposed it, and the British Delegation agreed that it would be sufficient to note it in the Minutes.

In the course of the discussion on Article 4 (1) it became clear that the adoption of the text was the outcome of the same attitude as that which prevailed when the Provisional Committee originally drew it up. As regards *tariffs*, in particular, it was found impossible at the present time to draw up final and precise regulations regarding the application or non-application of internal tariffs to goods in transit. It seemed sufficient to maintain the general principles embodied in the text of the Convention, which authorise differential treatment for economic reasons, but prohibit it when based on political grounds. The Italian Delegation urged that the Report should specifically mention the existence of a right to refrain from extending to goods in transit certain preferential tariffs accorded to internal traffic on special economic grounds. Several other delegations shared the Italian view, which accordingly was mentioned in the Report of the Sub-Committee. It was clearly understood that Article 4 should only apply to actual transit charges. The words *facilities or restrictions* only apply to such charges; the word *restriction* does not exclude the reservation by a State of certain maritime traffic which it may restrict to vessels flying the national flag.

In order to introduce an equitable allocation of charges for the use of all waterways, the Conference has included in the scope of Article 4 both conceded and State-administered waterways.

The question arose whether combined sea and land tariffs for transit traffic should come under the terms of Article 4. This gave rise to a long discussion, during which the following statement was made by M. Serruys, of the French Delegation, Rapporteur of the Sub-Committee which dealt with this Article :

“We have no desire to prevent the application by a State of internal import or export tariffs, which differ from transit tariffs, but we do wish to prevent the establishment of transit tariffs differentiated according to whether the goods in transit are carried under the national or under a foreign flag.”

The Italian and Roumanian Delegations opposed this view. It would seem, however, that the Committee has adopted the view set forth by the Rapporteur of the Sub-Committee, for it adopted Article 4 in its present form, in spite of the repeated opposition of the Italian and Roumanian Delegations. In adopting the proposed text, the Committee's intention was to ensure that the régime to be applied to traffic in transit should enable it to benefit by all the advantages attendant upon free competition.

In Article 5, the words *that passengers in transit are in a position to complete their journey* have special reference to the case of emigrants who may lack the necessary resources to enable them to complete their journey.

(1) Following on the discussion and an exchange of views which took place between M. Neujean (Belgium, Rapporteur) and M. Sinigalia (Italy) (see p. 212), the text of this paragraph was modified as follows :

The adoption of Article 4 was the outcome of the same attitude as that which had led to the adoption of the provisional draft. You have thought it inexpedient at present to decide whether or not internal tariffs are necessarily to be applied to goods in transit. You have thought it sufficient to maintain the general principles embodied in the text of the Convention, which authorise differential treatment for commercial reasons, but prohibit it when based on political grounds. The Italian Delegation, supported by other Delegations, urged that the Report should specifically mention the existence of a right to refrain from extending to goods in transit certain preferential tariffs accorded to internal traffic on special economic grounds.

A supplementary paragraph was added to Article 5, stating that the Convention shall not in any way restrict the right of the Contracting States to conclude international Conventions prohibiting the import or export of certain categories of goods, such as opium, or other harmful substances, or arms. Similarly, there is nothing in the Convention to prevent the carrying out of measures in accordance with the terms of international Conventions intended to abviate any infringement of industrial, literary or artistic proprietary rights, or dealing with false trade-marks, false marks of origin, or other methods of unfair competition.

The expression *general international Convention* must here be taken to mean an international convention to which any State may accede.

The object of an amendment submitted by the Italian Delegation was to authorise a State across which transit takes place to take special precautions with regard to goods which are the subject of a State monopoly. The Committee, although it recognised that such goods might be subjected to special supervision, and although it inserted a special passage in Article 5 authorising this, nevertheless intended it to be understood that such supervision must neither delay nor prevent the transit of such articles.

Several Delegations were anxious that anything which might prevent the concession of haulage service monopolies on waterways used for transit, should be expressly omitted from the Convention on freedom of transit. Your Committee has decided that this question lies outside the scope of the present Convention, and that it must confine itself to proclaiming the principle of complete freedom of transit as applicable in every contingency. This opinion is clearly expressed in the following passage :

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

The question whether, and under what conditions, such services may be established is not decided by the present Regulations. A formal decision was taken on this point.

No fundamental modification in the draft text of *Article 6* was made by the Committee.

Article 7 in its original form provided for certain special exceptions in the event of an emergency necessitating the adoption of measures for national security. This Article has been considerably amended. It now allows the imposition of restrictions on freedom of transit whenever the vital interests of a country are involved. Each State remains free to decide for itself what circumstances constitute a national emergency or imperil its vital interests. The jurisdiction provided for may, however, be called upon to decide whether any measures restricting freedom of transit have been adopted *bona fide*.

The present text of *Article 8* is the outcome of a compromise,—the result of concessions obtained not without considerable difficulty. Certain delegates thought that complete freedom of action should be reserved for belligerents in time of war, whilst others wished to determine, by means of strict and detailed regulations, the methods by which transit was to be maintained during periods of hostilities. Finally, a formula was adopted by a large majority, to the effect that the Convention does not regulate either the rights or the duties of belligerents in time of war. After this reservation, the article goes on to declare that the present Convention on Freedom of Transit shall remain in force in time of war, in so far as such rights and duties may permit. That really appears to be as far as the Conference can go in the matter. As a matter of fact a majority in favour of this formula (1) was only obtained after the adoption of the Recommendation *that as soon as possible the League of Nations shall invite its*

(1) After discussion, this paragraph was modified as follows (see p. 209).

It was only with difficulty that a majority in favour of this formula was obtained,—and this only after the adoption, by 23 votes to 5, of the following motion, which it was decided to include in the Final Protocol :

The Sub-Committee unanimously begs the Conference to adopt the following Resolution: That as soon as possible the League of Nations shall invite its Members to meet for the purpose of drawing up new Conventions intended to govern the rights and obligations of belligerents and neutrals in time of war.

Members to meet for the purpose of drawing up new Conventions intended to govern the rights and obligations of belligerents and neutrals in time of war.

Those in favour of the maintenance of existing Conventions would only undertake an obligation to draw up future Conventions in accordance with the statute which we are framing; the arguments which they advanced in support of this view were mainly legal. The advocates of the policy of turning over a new leaf in international relations would have preferred the complete abandonment of all previous agreements and treaties, and the substitution for them of the new General Convention and any special Conventions which may be based upon it. Between these two views numerous formulas were proposed which were all more or less in the nature of a compromise. The Conference recognised that it could not demand the abrogation of old agreements, even if they were in contradiction with the provisions of the new Convention. In this connection, the Italian Delegation, whilst, as a conciliatory measure, accepting the text adopted, desired nevertheless that a declaration should be placed on record, to the effect that a Power which has signed a Convention with one or more other Powers is not obliged to cancel any treaty, at the request of one of the other signatory Powers, and that it is only under an obligation to consider whether such treaty can be brought into accord with the Convention on Freedom of Transit. Your Committee has asked the Contracting States to undertake to modify these agreements as soon as possible in order to harmonise them with the texts adopted by you, and to undertake in the future only to conclude agreements or treaties which are in conformity with the new Convention. It has, however, recognised that Contracting States may, in exceptional cases, sign treaties in contradiction with the provisions adopted at Barcelona, provided they are justified in so doing by geographical, economic or technical considerations. This was a concession reluctantly made in order to provide for contingencies which cannot be foreseen in all their details.

Some members considered it unnecessary to retain the other exception which is specified in Article 12 (new text) in favour of devastated areas. Article 2 only allows transit over existing routes which are suitable for this class of traffic. Moreover, Article 7 allows of deviation from the general rule, when the vital interests of a country are at stake, whilst it had also been decided to insert in the Final Protocol a reference to the right of priority reserved for *traffic of vital importance to a country*. This would have been sufficient to ensure the exception claimed by certain devastated countries. *Article 12* was, however, retained.

The words *by enemy troops* have been omitted. It was indeed more logical to place every kind of devastation resulting from the war in the same category. In retaining these provisions, the Committee was following out a principle contained in the Covenant.

It is not to be imagined that in the course of years, the application of a general Convention on Communications and Transit will never give rise to difficulties between the Contracting States, and to divergent interpretations, or that the possibility of a conflict of interests will be finally eliminated. It was necessary to provide for the settlement of such disputes and the solution of such difficulties, and this is the object of Article 13 of the Convention. The drafting of this article entailed considerable difficulty. The Committee which was called upon to bring it into accord both with existing decisions and with certain specified contingencies, succeeded in drawing up a text which obtained the approval of the great majority of the Delegations. The Article provided that disputes *shall be brought before the Permanent Court of International Justice unless... steps are taken for the settlement of the dispute by arbitration or some other means*. That is the text as finally adopted. By *settlement* we understand a final, irrevocable solution of the question.

The question of disputes between Contracting Parties necessarily involved that of reconciliation between the Parties prior to any form of judicial action. To whom should the task of attempting to bring about this reconciliation be entrusted? It was necessary to preserve the rights and prerogatives of the Council and Assembly of the League of Nations in this matter. How should we designate the body to be entrusted with the preliminary task of attempting to clear up disputes and bring about a friendly solution? It was essential to take into consideration the existence of vague feelings of distrust, and susceptibilities which might have to be respected,

and so your Committee adopted the following text, which was the outcome of much reflection on the part of the Sub-Committee :

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit.

In a report which he read to your Committee, M. van Eysinga commented upon the words *having due regard to the rights... of the Council and Assembly*. In accordance with your decision, this commentary will be inserted in the Final Protocol. It therefore seemed to me unnecessary to reproduce here the arguments advanced by the distinguished Dutch jurist.

It was also necessary to consider emergency measures to ensure the continuance of transit in the event of a dispute. The Plenary Committee agreed that the same Advisory and Technical Organisation should be called upon to recommend such measures, by means of what it styles a *provisional opinion*.

The text adopted for Article 13 was considered sufficiently complete in itself to allow of the omission of Article 16, which had appeared in the Draft Convention; this omission was agreed upon unanimously by your Committee.

And now I have come to the end of my task. I should like to thank very heartily those who have assisted me : General Mance, who supplied me with very full notes on everything that took place, and my collaborators MM. Pierrard and Stièvenard. I apologise for having taken up so much of your time. I should have liked to spare you still further, but there was a great deal of material with which we had to deal. I have tried to extract the essential elements, and to present you with an objective summary of the work of your Committee. It is perhaps incomplete. If so, you must be kind enough to supplement it by reference to the very clear statement in the *Green Book*, to the verbatim reports of the Meetings and to the excellent speech which M. Lou-don delivered in opening the meetings of the Committee, over which he presided with unfailing courtesy and authority. A reference to these sources will, I am convinced, lead you to vote unanimously for the carefully prepared Draft Convention which is now submitted for your approval. By so doing you will fulfil the desire of that illustrious historian, that genial and profoundly human philosopher, the President of our Conference, for "you will have partially succeeded, in an exclusively practical and technical sphere, in establishing harmony between those two political forces which the law of nature and the laws of history maintain simultaneously in being,—internationalism and nationality."

Once more, in the forceful words of M. Gabriel Hanotaux, let us hope that in the near future we may be able to achieve "the exact point of fusion between the idea underlying the creation of the League of Nations and the interests of the various peoples."

ANNEX (1)

Supplementary Report on Transit Convention.

The Committee has not confined itself to amending the texts submitted to it for discussion. It proposes to expand them by the addition of certain new provisions, the effect of which will be to exempt from the application of the Convention certain territories where the enforcement of the general régime would give rise to almost insurmountable difficulties. This applies to the portion of British India comprised in the Delta of the Ganges, which contains eight foreign settlements, occupying a very small area in proportion to the extent of the Empire; these settlements are enclaved in Indian territory under very unusual conditions which do not permit of the organisation of an adequate service of fiscal supervision. Administrative difficulties will also

(1) It was considered better to append this annex to the Report, although it was issued at a later date.

be encountered in Indo-China. The frontier of that country is of great length in comparison with its area, and it is impossible in many cases to penetrate into the interior except by utilising native craft; this gives rise to great difficulties and makes it impossible to exercise any continuous supervision over transit operations. The Sub-Committee appointed to examine the amendments prompted by the above facts was of opinion that the unusual conditions prevailing in each of the two regions in question justified the adoption in their favour of an exceptional régime for transit. Taking the view that a general formula would be preferable to an enumeration which might appear arbitrary, the Sub-Committee decided to provide for deviations from the general rule by means of the following clause :

In view of the fact that within or immediately adjacent to the territories of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with those territories, and forming detached territories or settlements of other parent States, to which it is impracticable, for reasons of an administrative nature, to apply the provisions of this Statute, it is agreed that these provisions shall not be applied to the above-mentioned areas or enclaves.

The same is the case where a colony or dependency has a very long frontier in comparison with its superficial area, and where, in consequence, it is impossible to provide customs and police control.

The States concerned, however, shall apply in the case of such areas a regime which will respect the principles of this Convention and facilitate transit and communications as far as practicable.

This wording was subsequently adopted by the Plenary Committee. In conformity with the spirit of the last paragraph, it was also specified that where transit dues are at present in force in any of the territories thus excepted, these dues should be reduced or even entirely abolished as soon as circumstances permit, and that no new transit dues should be imposed in any of these territories. It was also recognised that the new text had been drawn up in order to meet the special difficulties of British India and Indo-China. It may of course also be applied, as an exceptional measure, to any other territories where similar difficulties arise. But it was agreed that an extension of this kind could only take place under similar conditions, and then only with the consent of the States which would be affected by the application of this exceptional régime.

As amended, *Article 10* of the draft convention on freedom of transit provides that conventions, agreements and treaties concluded by Contracting States on questions of transit before May 1st, 1921, shall not be abrogated, subject to the terms of Article 19 of the Covenant. At the request of the Portuguese Delegation, the Sub-Committee, and afterwards the Plenary Committee, recognised that this provision should apply to the Treaty of June 11, 1891, between Great Britain and Portugal, by the terms of which and *ad valorem* duty of not more than 3 % may be levied on goods in transit to Rhodesia or on the Beira-Matadi railway.

The Committee also took note of the remarks of the Portuguese Delegation with regard to the colony of Angola, and as a result no State can be compelled, under the terms of the proposed Convention, either to construct special railways in order to facilitate transit, or to concede territories for such construction. The above are merely deductions—affecting particular cases—from the general principles embodied in the Convention.

As a result of amendments submitted by the Delegations of Great Britain and China, a new Article was proposed, in the following terms :

It is understood that this Convention must not be interpreted as regulating in any way the rights and obligations *inter se* of territories forming part or placed under the protection of the same sovereign State, whether or not those territories are individually Members of the League of Nations.

Finally, the Chinese Delegation discussed with the Committee the possibility of applying the Convention on Transit to certain ports leased to foreign powers and situated on the frontiers of China; the territory belonging to these ports is very small and their population is considerable, and a Chinese customs service has been established in them. As a result of these conversations, it was decided that the difficulties to which the very peculiar position of these ports may give rise shall be settled in accord-

ance with the principles laid down in the Commentary contained in the *Green Book*. The following passage occurs on page 39 of that document :

The expression *authority* applies to every case (suzerainty, protectorate, mandate, etc.) where the State responsible for the carrying out of the Convention does not possess sovereignty over the territory across which the transit takes place. It has been found impossible to determine in advance, in every case, upon which of the signatory States the responsibility will devolve; any difficulties that may arise can be solved individually. The State responsible for a measure is the State which actually possesses the means either to bring about or to prevent its application... Where, for example, sovereignty and authority are apportioned between different States, as a result of settlements, which would imply such a division of authority, it would be for the States concerned to agree among themselves as to the application of the present Convention.

The same commentary further mentions that in the definition of transit *the word "frontiers" refers to political frontiers, though there are a few specifically mentioned exceptions in other texts, such as in the case of free zones in ports.* (*Id.*, p. 41.)

* * *

THE PRESIDENT (speaking in French). — We are all grateful to the chief Belgian Delegate for the Report which he has been good enough to lay before the Conference; it is remarkable for its clarity and simplicity, and is bound to prove of the greatest possible value.

I feel sure that he has replied to most, if not all, of the questions which are likely to arise in connection with the subject, and he has really accomplished a remarkable feat by exposing in such simple and clear language a matter so complex, in which such a variety of interests are involved. I am persuaded that the result will justify his efforts, and I have not the smallest doubt that the Conference will set the seal upon this brilliant piece of work by adopting it in its entirety.

I call upon Sir Hubert Llewellyn Smith, the British Delegate, who wishes to make certain observations.

Sir Hubert LLEWELLYN SMITH (Great Britain). — May I begin by expressing the very cordial thanks of the British Delegation to M. Neujean for the care, skill and labour which he has expended on producing this excellent and extremely useful Report. I think that we shall all be able to accept it, with very small modifications, as covering all that is necessary for the Transit Convention. I suppose that it will be to the advantage of the Conference if any small points of amendment or criticism are suggested at once and entered in the Minutes; we naturally do not propose any formal amendments.

In particular, with regard to that part of the Report which deals with Article 5, I think that one point has been omitted,—not by the fault of the Rapporteur, for the records of the meeting itself are not very explicit on the subject. Those of you, however, who were present at the discussion of that article, will certainly remember that the British Delegation proposed an amendment to emphasise the fact that the terms of Article 5 applied to the transit of deleterious spirits. After studying the question, the Plenary Committee decided unanimously that the transit of these goods was covered by the words *public health*. It was further considered that no amendment was necessary in order to establish the right of a State to exclude counterfeit coinage from the benefits accorded to goods in transit. If the Rapporteur could introduce a short paragraph on these lines, I should be grateful to him.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I see no objection to making an addition on the lines proposed by the British Delegate.

THE PRESIDENT (speaking in French). — Is not the idea covered by the words in the text *dangerous drugs*?

Sir Hubert LLEWELLYN SMITH (Great Britain). — We would rather have it in the Report, because as a matter of fact the record of the meeting does not refer to the matter in very explicit terms.

I have only one other point, and that is a small one in connection with Article 8. The Recommendation adopted on the subject of the summoning of a Conference to consider the rights and duties of belligerents and neutrals in time of war was not adopted unanimously, and I should like the words *by a majority* added. If you agree, we could even put the names of the States which voted in the minority.

M. CARLIN (Switzerland; speaking in French). — If the words *by a majority* are to be added, I would ask for the words *by a large majority*.

THE PRESIDENT (speaking in French). — We will state the figures,—23 to 5 (1).

Sir Hubert LLEWELLYN SMITH (Great Britain). — Those are the only points to which we wish to call attention, and I have to thank the Rapporteur very sincerely for the conciliatory spirit he has displayed in accepting the various suggestions I have made. I finish as I began by thanking him most cordially for his excellent work.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Is M. Neujean's Report to be taken as dealing with all the points which have arisen during the discussion in Committee and which have been adopted, or mentioned in the records? The Chinese Delegation and ourselves asked for a commentary on the proceedings. Is this Report to be considered as a commentary or is another one to be made? If the former, does this document cover all the points and was it based on the records of the Meetings?

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I am surprised at the remarks of the Serbian Delegate. No parliamentary report ever reproduces every point appearing in the documents upon which it is based. If I had reproduced the whole contents of the Minutes, my Report would have been of inordinate length, and I should have wasted a great deal of time. As I have been careful to state, I have published the essential points of the records,—all, in fact, which were the subject of discussion, and I even added at the end of my Report that it could with advantage be supplemented by a study, both of the *Green Book*, which in reality amounts to a commentary, and of the Statement made by the Chairman, M. Loudon, which is a complete and lucid report in itself. These three documents together constitute a commentary on the proceedings. Such is the invariable procedure, both in law and in parliamentary work.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am grateful to the Rapporteur for his explanation. As I thought, his General Report is simply a preface to the discussion on the Articles, and does not cover all the points appearing in the records of the meeting. It is a question upon which further light might with advantage be thrown. The Rapporteur has spoken of the *Green Book* and of Mr. Loudon's Statement, which are fully appreciated by us, but in my opinion more weight should be attached to what was said in Committee and at the meetings of the Conference. The principles embodied in the *Green Book*, and the commentary contained therein, have been considerably amended. I wished to emphasise that, in my opinion, most weight should be attached to the records of the Plenary Meetings and of the Committee Meetings.

THE PRESIDENT (speaking in French). — You are quite right. The records form part of the archives and are available for reference.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — May I ask a question? Will a further commentary be made on the General Conventions,

(1) See note on p. 205 for final text of Report.

as was done in the case of the Draft Conventions, and will this commentary be discussed here?

THE PRESIDENT (speaking in French). — A Report is made upon each Convention. The Report on the Transit Convention has been circulated and read, and we are now going to read the Articles.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — That being so, I will reserve my remarks until the discussion on the Articles.

M. BIGNAMI (Italy; speaking in French). — I congratulate M. Neujean most sincerely on his brilliant Report. I would ask the President to allow M. Sinigalia to state the views of the Italian Delegation.

THE PRESIDENT (speaking in French). — M. Sinigalia will now speak.

M. SINIGALIA (Italy; speaking in French). — In the admirable summary which has just been read to us, the Rapporteur states in connection with combined rail and sea tariffs (1), that, as a result of a lengthy discussion upon the report of the Sub-Committee on the amendments dealing with combined transit scales, the following declaration was inserted in the report :

We have no desire to prevent the application by a State of internal import or export tariffs, which differ from transit tariffs, but we do wish to prevent the establishment of transit tariffs differentiated according to whether the goods in transit are carried under the national or under a foreign flag.

This is surely not to be regarded as a definite decision. My remarks must not be taken as being in any way a reflection on the statements made by the Rapporteur. I recollect that, at the Meeting which was held on March 19th (2) on the subject of transit, the discussion became somewhat confused, and this question was dealt with from several different points of view. It was, I think, recognised at that time that the question might equally well have been raised during the discussion of the draft conventions on railways and ports respectively, or in connection with the convention on navigation; the opposition encountered was solely due to a desire to keep the question of transit separate from that of flag rights or railway tariff scales. No actual decision was then taken,—it was merely decided to postpone the question, or, if you like, to refrain from, prejudging it. I may be wrong, but I am sorry not to be able to share the view taken by the Rapporteur. If I am right, may I request that, in the record of this Meeting, the fact should be made quite clear that the question is not in any way prejudged by the discussions which have taken place, more especially since, in Article 4 of the Railway Convention, the Committee appointed to prepare that Convention stated that : *this stipulation must not be considered as affecting in any way the question of combined rail and sea tariffs*. A wrong impression would be created by the apparent contradiction existing between a desire—which is evident from the above-mentioned Article 4—not to prejudge the question of combined rail and sea tariffs in connection with imports and exports, and a decision relating to traffic in transit which involves an entirely contrary effect, since, of course, railways are also engaged in transit traffic. This would result in the creation of an entirely unjustifiable mixed railway tariff system.

The Italian Delegation does not desire to promote a discussion on the principle involved, which is perhaps not within the competence of this Conference, but it requests that the possibility of a discussion of this nature being held on some future occasion and in some suitable place, should be recognised. The Italian Delegation would also like attention drawn to the fact that the Committee was not unanimous on the question.

Finally, we would add that the most resolute attempt to maintain preferential treatment could only be illusory and would not go beyond mere theory, since all forwarding agents who are conversant with the best methods of transport would still,

(1) See p. 204, para 6.

(2) See pp. 112 *et seq.*

by means of re-entries and re-forwarding, be able to attain the result which it is desired to prevent, and there is no means of preventing this without infringing on the liberty of the individual.

With regard to that part of the Report which deals with Article 5, the Italian Delegation would like to propose a small change in the French text, namely, in the last line of the fourth paragraph, the substitution of the words *ni entraver* for the words *ni gêner*.

THE PRESIDENT (speaking in French). — Is anyone opposed to this change?

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I cannot see much difference between the words *gêner* and *entraver*, but I see no objection to making the proposed alteration.

With regard to the first point, I am sorry that the Italian Delegate should have made this remark. In order to avoid any misunderstanding I took care to mention the long discussion on the report of the Sub-Committee for the examination of amendments concerning combined scales of transit tariffs as a result of which the Rapporteur made the statement beginning *But we do wish to prevent the establishment of transit tariffs differentiated...* I am sorry, not for the sake of the Conference, but for the sake of the Italian Delegate; for both the Sub-Committee and the Plenary Committee decided against his view. I can do nothing to alter their decision; I see no possibility of modifying this sentence. You may make reservations, in the hope that a change may be made in the near future, but the Report contains the decision which was taken; it is a correct summary of the record of the meetings, and I do not see how it can now be added to or abridged.

THE PRESIDENT (speaking in French). — M. Sinigalia's remarks will appear in the Minutes of this Meeting.

M. SINIGALIA (Italy; speaking in French). — In the Minutes of the Plenary Committee I cannot see any mention of a vote on this subject. There was a discussion, but no decision was taken.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I have reproduced almost the exact terms of the records of the meeting. I have not them here before me, but the discussion resulted in the following declaration by the Rapporteur: *But we do wish to prevent the establishment of transit tariffs differentiated according to whether the goods in transit are carried under the national or under a foreign flag.* This declaration was made by the Chairman of the Sub-Committee on behalf of the Sub-Committee, and it settled the point.

M. SINIGALIA (Italy; speaking in French). — I have looked through the records of the meeting in order to find these words, but I have not been fortunate enough to come upon them. Perhaps a verbal declaration was made, but the Committee did not take a vote. In my recollection the Meeting rose without coming to a decision on the subject.

Mr. MANCE (British Empire). — I have not the Minutes before me, but I must say that my memory has strangely deceived me if no vote was taken on the subject. Perhaps one or two Members here will state whether they can confirm that recollection.

M. SINIGALIA (Italy; speaking in French). — If it is stated that a vote was taken, I should like the Minutes to be read aloud.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — That is the reason why I raised the question of the Minutes just now.

THE PRESIDENT (speaking in French). — It is obvious that this is not the place to clear up this matter; it is a question for the Committee. The simplest way would be for M. Sinigalia and the Rapporteur to consult the text together for a few minutes; that should suffice to clear up the matter (1). The incident is closed. M. Tsang-Ou, the Chinese Delegate, will now speak.

M. TSANG-OU (China; speaking in French). — I understand that the object of this meeting is to adopt a final text for the Convention on Transit. The official text is in English and French, and is subject to ratification by the legislatures of each country. In view of the fact that in my country the Members of Parliament do not all speak English and French, I shall have to translate the text into Chinese. I should like to know which documents are to be considered as authoritative and read in conjunction with the Transit Convention,—that is to say, which documents are to be regarded as possessing legal value in the event of disputes between the Government and the Chamber, or between my own and another Government. To take one example, the mere word *authority* puzzles me, and so does the word *sovereignty*. I shall have to expound their meaning, and as I cannot do this in my own way, I must base my explanations on some kind of Commentary, that is, an analytical summary of the texts we have adopted and the discussions which have taken place. This was done for the *Green Book*. It is essential for me to know the exact scope of every article, otherwise I shall be completely at a loss.

THE PRESIDENT (speaking in French). — I must admit that I should be very much puzzled to know how to translate the words *authority* and *sovereignty* into Chinese. Your intimate knowledge of the French and English languages places you at a great advantage over me. Any suggestions I may make will therefore be offered in a very humble spirit. I think that no Commentaries in the true sense of the word exist with regard to law and international texts. The gradual accumulation of jurisprudence constitutes a Commentary. A Commentary is always *post legem*; it does not accompany the law but follows it.

M. POLITIS (Greece; speaking in French). — An authentic interpretation does not exist.

THE PRESIDENT (speaking in French). — There is, for instance, no Commentary on the Civil Code; the Law is what we make it here. With regard to jurisprudence, all our documents will possess the degree of authority which jurisprudence bestows upon them, neither more nor less.

M. TSANG-OU (China; speaking in French). — In that case, if I take the text of the Convention, the Report of the Rapporteur-General, and the *Green Book*, shall I have before me all the official documents of the Transit Convention? That is the question I would ask.

THE PRESIDENT (speaking in French). — The law or, if you like, the Convention, is not accompanied by any commentary bearing an official character. Apart from this, there are documents which may serve to enlighten yourself and your Government and Parliament, and you may make what use you please of them; but the Conference cannot lay down that they constitute a commentary on the law. I appeal to the jurists and ask them whether it can be said that there exists an official commentary on a law.

M. TSANG-OU (China; speaking in French). — I understand, Mr. President. You say that a commentary does not exist, that only the official text of the Convention has a legal value, but that, in interpreting this text, I am free to consult the *Green Book* and the records of the meetings. If a dispute should arise, the case will be submitted to international jurisdiction, and it will be said, "You translated wrongly;

(1) See note on p. 204 for the final text adopted as a result of this consultation.

that should not be so interpreted.” I shall reply that I found in the *Green Book* the word *authority*, and that that word occupied my mind, because for me it signified a very great deal. I should therefore like to be told, “You may take as a foundation the text of the Transit Convention, the *Green Book*, the *Blue Book* (1), because these are official texts.”

THE PRESIDENT (speaking in French). — I cannot say that. For example, everyone knows the Civil Code, commonly known as the *Code Napoléon*. You know that there are famous commentaries upon it,—summaries of the discussions which took place at the State Council in the presence of the First Consul, Bonaparte. When an Article of the Code is under discussion before a court, it often happens that the Minutes of the State Council are quoted, but although the debates which they report took place before the Head of the State, no one has ever claimed that they had any official value. It is only the law, that is to say, the Convention, which has official value.

M. SCASSI (Greece; speaking in French). — That is quite evident.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — When I asked whether there would be a commentary on these Conventions, I had in mind purely the practical side. I remembered that we had drawn up Conventions which would be carried out by practical men and not by legal advisers. It is, therefore, technical men who should draw up the Draft Conventions and apply their provisions. It is indispensable that every document should be accompanied by an explanation, a commentary or statement of reasons. Why have we so often referred to the *Green Book*, which has already become history? Why does the British Delegate request that such and such a word may be changed in such and such a passage of the General Report? Because these documents have value. But do not let us discuss the matter any further. It would give me great pleasure if we could all agree to request the Officers of the Conference to draw up a Report based on the records of the meetings. The General Report submitted to us by M. Neujean should serve merely to open the discussion on the articles, but the Report to which I refer would be prepared by the Officers of the Conference, and would be based upon the records of the meetings. Do not let there be any misunderstanding. The *Green Book* is sacred to all of us, as far as it can be sacred. In brief, I appeal to the Officers of the Conference and to the President to grant as a commentary,—a kind of statement of reasons,—which may serve as a basis for interpreting the Conventions.

M. SCASSI (Greece; speaking in French). — That is impossible.

M. ALVAREZ (Chile; speaking in French). — I do not understand the discussion that has arisen in this matter. Precedents are unanimous on this point; only actual texts are official. There is no official commentary; there are only certain documents which may be termed semi-official. These latter are of two kinds: firstly, the preparatory work of the Conference, which comprises the early drafts, the work of the Sub-Committees and Committees, the debates which took place; and, secondly, Reports of Committees, and in particular the General Report accompanying the final texts of the Convention as submitted to the approval of the Plenary Meeting. The Rapporteur may upon occasion add to the text of the Convention a short commentary drawn up by himself and reflecting the views of the Committee. This was done with some of the Conventions submitted to the second Hague Conference, and also with the scheme put before the Naval Conference in London in 1909. All these commentaries and also other precedents are not official commentaries, but are what is termed “semi-official” documents. They are of value in helping us to understand the spirit and exact scope of some of the Articles of the Convention. Besides, it would be almost impossible to draw up an official commentary emanating from the Conference itself. I would therefore ask the Conference not to delay longer over this discussion.

(1) Resolutions of the Assembly.

M. SCASSI (Greece; speaking in French). — Hear, hear.

M. ALVAREZ (Chile; speaking in French). — We have, then, on the one hand the Report approved by the Conference and stamped by it with a semi-official character, and on the other hand the preliminary documents which have a scientific and practical value.

M. SCASSI (Greece; speaking in French). — Hear, hear.

THE PRESIDENT (speaking in French). — I note that everyone is in agreement, since M. Avramovitch is also joining in the applause.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am applauding because the Chilian Delegate asked that a General Report should be adopted by the Conference.

M. ALVAREZ (Chile; speaking in French). — You are under a misapprehension; I referred to the Report drawn up by M. Neujean.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Then it must be completed.

M. ALVAREZ (Chile; speaking in French). — You are not entitled to do it.

THE PRESIDENT (speaking in French). — Perhaps I could throw some light on the debate by expressing what is in everyone's mind,—that the Secretariat, under the supervision of the Officers of the Conference, will prepare a volume to include the text of the Conventions, M. Neujean's semi-official Report and all the previous texts. This volume will contain both official and semi-official matter, and in this way all the information for which M. Tsang-Ou has asked will be collected together.

M. TSANG-OU (China; speaking in French). — I am not afraid of technical responsibility, but of the responsibility of interpreting the documents correctly.

THE PRESIDENT (speaking in French). — The incident is closed. The volume shall be published under the supervision of the Officers of the Conference, for such a volume is indispensable.

M. CARACOSTEA (Roumania; speaking in French). — It will be remembered—M. Loudon was present at the time—that I had occasion during the discussion to submit an amendment with regard to certain agricultural countries, and it was decided to insert this amendment in the Final Protocol. I was myself satisfied with this procedure, but now, in view of the explanations we have just heard, I am wondering whether the Final Protocol really has any value at all?

THE PRESIDENT (speaking in French). — It carries the same weight as the Convention.

M. SCASSI (Greece; speaking in French). — It is incorporated with it.

M. CARACOSTEA (Roumania; speaking in French). — Thank you, Mr. President.

M. LANKAS (Czecho-Slovakia; speaking in French). — I hope you will forgive me for making some remarks on this incident, which is of great interest, and the origin of which it would not be amiss to recall. All, or almost all, the work in Paris was done by Sub-Committees, and no shorthand report was taken of their proceedings. The Secretary-General made notes, and at the conclusion of our labours he presented an exceedingly profound and detailed study of all the proposals adopted. This work could really constitute a commentary on the Conventions. Here, however, the situa-

tion is quite different. We have records of the Meetings; there is no advantage in making a commentary similar to the *Green Book*, and indeed it is not even possible to do so. What we can do is to set down the guiding principles of our debates. It is not that I wish to detract from the value of the *Green Book*, but we cannot write another *Green Book* here.

THE PRESIDENT (speaking in French). -- Does anyone else wish to comment on M. Neujean's Report?

DISCUSSION OF ARTICLE 1

We will now begin the study of the text of the Draft Convention on Freedom of Transit as adopted by the Drafting Committee. We will read it out article by article, on the understanding that the vote will be taken according to the rules adopted at a previous Meeting on the Rules of Procedure.

Persons, baggage, and goods, and also vessels, coaching and goods stock, and other means of transport shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.

Traffic of this nature is termed in these Regulations *traffic in transit*.

M. LANKAS (Czecho-Slovakia; speaking in French). — As I ventured to say, I will return to the question of mails and postal parcels, but I will be brief. The Report presented to us states that the words *mails and postal parcels* have been deleted, not because mails and postal parcels are to be excluded from the benefits accorded to freedom of transit, but because they have already been dealt with in the recent Madrid Convention. I had urged the retention of the words *mails and postal parcels* in the Convention on Freedom of Transit, but the Plenary Committee decided otherwise. I do not want to return to this question by again requesting the insertion of these words. I have studied the Madrid Convention. Freedom of Transit is certainly dealt with there, but, I must add, in rather a summary fashion. This is what the Madrid Convention says: *Freedom of transit for "mails and postal parcels" is guaranteed*; and that is all. I agree with you that it is unnecessary to make any addition to the actual Convention, but I do think it would be desirable to reproduce in the Final Protocol the exact terms of the excellent Report with which we are at present dealing, namely: *Your Committee has omitted any mention of mails and postal parcels. This does not mean that mails and postal parcels are excluded from the benefits of freedom of transit; the reason is that they have already been dealt with by the Madrid Convention.* May I request the French Delegate to be good enough to give his views on this subject?

M. BONNET (France; speaking in French). — You will recollect the circumstances in which the words *mails and postal parcels* in Article 1 were deleted. The Madrid Convention, which was signed last December, provided that transit for mails and postal parcels should be free, and it therefore seems superfluous to make any mention of them in our Convention, especially as, had we done so—and the Italian Delegation shared the view of the French Delegation on this subject—there might have arisen as a result differences of interpretation between the Madrid Convention and the Transit Convention which was to be drawn up at Barcelona. It will always be understood, therefore, that mails and postal parcels are to benefit by freedom of transit in the same manner as any other class of traffic. We see no objection to the inclusion of this statement in the records of the meetings; indeed, it is already clearly indicated in M. Neujean's Report. I must, however, point out that the Madrid Convention was concluded, not between Postal Administrations, but between States. The Regulations for the carrying out of the Convention were concluded between administrations, but the Convention itself was concluded between Governments. Freedom of transit is therefore guaranteed in all countries which are members of the Postal Union, and as that Union

is open to the membership of all countries which desire to join it, freedom of transit is thus guaranteed as completely as possible.

THE PRESIDENT (speaking in French). — Mention of this will be made in the records of the meetings.

M. LANKAS (Czecho-Slovakia; speaking in French). — If it is sufficient for these explanations to be entered in the records of the meetings, I will not press my point further.

THE PRESIDENT (speaking in French). — In my opinion, mention in the records of the meetings is sufficient. The entry will be made as the result of a decision by the Officers of the Conference.

M. ORTUÑO (Spain; speaking in French). — I simply wish to put the following question to M. Neujean : the last paragraph of Article 1 reads as follows : *Traffic of this nature is termed in these Regulations "traffic in transit"*. At the beginning mention is made of a *Draft Convention*. The Regulations which we are now discussing—and I fully realise now why they are called *Regulations*—will be transformed into a Convention, after they have been supplemented by certain documents at present missing. It seems to me that instead of referring here to the *present Regulations*, it would be clearer to speak of the *present Convention*, since these Regulations will soon be in their final form.

THE PRESIDENT (speaking in French). — That is a point which has specially examined at the request of Sir Cecil Hurst and along the lines indicated by him; it is he, therefore, who can best enlighten us upon it.

Sir Cecil HURST (Great Britain). — The text of the Report submitted by M. Neujean to the Conference made it clear that it dealt only with those of the Articles adopted by the Committee which treat of what I may term the technical aspects of the transit question. The Conference will remember that the articles on transit were laid before the Conference and were discussed by the Committee in the form of a Draft Convention. That Draft contained a number of provisions which dealt with the principle of freedom of transit, and with the exceptions that were admitted to that principle. It contained also a series of articles dealing with the machinery by which the stipulations of this first group of articles were to be set in motion, namely, the question of the signature of the Convention, that of the accession of States to the Convention at a later date, of the ratification of the Convention, of denunciation, and so on.

For the purpose of my remarks I may term this second group of articles the *Formal Articles*. They constitute an entirely different group of articles from the *Technical Articles*. When the Plenary Committee dealing with these transit articles reached these *Formal Articles*, it referred them to the Officers of the Conference for consideration as to the best form in which they should be laid before the Conference for adoption. There is now under discussion by the Conference only the earlier group of articles, which I described just now as the *Technical Articles*, but it is natural that the Conference should wish to know the form in which there will be proposed to it at a later date the group known as the *Formal Articles*. The proposal that will ultimately be made to you is that the *Formal Articles* should be grouped together and should form a Convention; that the *Technical Articles* should be grouped together and should form *Regulations*, the Convention to bestow a legally recognised existence upon the Regulations. This is a system which has been followed on several previous occasions, the last and the most conspicuous example being the Protocol for the adoption of the Statute of the Permanent Court of International Justice, which was adopted by the Assembly at Geneva last December. Some of you were at Geneva, and you will remember that this Statute was adopted by a Resolution of the Assembly, and is to be brought into being and recognised as a Convention binding the different Powers, by being annexed to a Protocol to be signed by the plenipotentiaries of these Powers. Another example even more closely analagous to that with which we

are now dealing is that of the *Convention concerning the Laws and Customs of War on Land*, which was adopted by the second Peace Conference in 1907. There, the whole group of articles dealing with these laws and customs constitutes Regulations attached to a comparatively short Convention, under which all the High Contracting Parties agree to bring those regulations into force. If this system is adopted, all the transit articles will constitute *Transit Regulations* to be annexed to a Convention. This Convention will contain the obligation entered into by the High Contracting Parties to accept all the obligations embodied in the Transit Regulations. There will also appear in the Convention the provisions on ratification, on the accession of States which either have not been represented at this Conference or to which the Council of the League may ultimately decide to communicate the text of the Convention officially, and on denunciation, as also those concerning the keeping by the Secretary-General of a register showing which Powers have accepted the Regulations, and so on.

This grouping into two separate departments, the first containing the Formal Articles in the form of a Convention, and the second the Technical Articles in the form of Regulations, will not alter or prejudice in the slightest degree the legal position or the legal rights and obligations of the Parties which accept the instrument. That is the proposal which will be brought before the Conference at a later date for discussion.

Now may I indicate the special reasons which led the British Delegation to propose the adoption of this method? You will remember that at the time when the Covenant of the League of Nations was framed by the makers of the Treaty of Versailles, some of the British Dominions were admitted as separate Members of the League of Nations, and consequently, so far as concerns the technical articles on Transit—those included in the Regulations—those Dominions, being separate Members of the League, should be entitled to participate as separate entities in the rights and duties arising from these articles. On the other hand, the whole of the British Empire is subject to one Sovereign, and all Treaties in respect of the Empire are made in his name. He alone, therefore, can be described correctly as a *High Contracting Party*, even though he contracts through different plenipotentiaries for different parts of the Empire. If the phrase *High Contracting Parties* were used in the Technical Articles, it would be very difficult to make it clear that the British Dominions and India, as separate Members of the League of Nations, counted for the purpose of those articles as separate units, and that other States were not bound to grant to the commerce of such Dominions and of India the advantages provided for in those Transit Articles, without an assurance of reciprocal treatment. In view of the fact that some of the Dominions are not represented at this Conference, it is, of course, right that the representatives of other Powers should ask that, at the time of the signature of the Convention, the British plenipotentiary should make a statement indicating precisely the position of those Dominions in respect of the Transit Regulations.

I have endeavoured to explain to you a question which is most complicated and difficult, and I would ask you, if I may, to be so kind, before you attempt to grapple with the intricacies that surround that institution known as the British Empire, to wait and see in the records of the meeting the text of what I have said, rather than attempt to plunge into a long discussion of the question, when the meeting has already lasted some three hours.

THE PRESIDENT (speaking in French). — If the Conference sees no objection, we will return to the discussion of the Transit Convention at our next meeting.

The Meeting adjourned at 8.10 p.m.

TWENTIETH MEETING OF THE CONFERENCE

(Monday, April 11th, 1921, at 11 a.m.)

DISCUSSION OF REGULATIONS — DISCUSSION OF ARTICLE 1 (CONTD.) — DISCUSSION OF ARTICLES 2 TO 10 — REQUEST OF CHINESE DELEGATE — DISCUSSION OF ARTICLES 11 TO 13 — RECORD OF 13th MEETING, REPORT ON ARTICLE 13 OF REGULATIONS

The Meeting opened with M. Hanotaux, President, in the Chair.

THE PRESIDENT (speaking in French). — We will proceed with the discussion of the Draft Convention on Freedom of Transit. We are beginning a new week, and I sincerely hope it will see the end of our labours. Those of you who were present at the Assembly at Geneva, or at the Transit Committee here, will realise that a time comes when it is necessary to speed up the meetings. During the last week of the meetings at Geneva it was decided that each speaker should be allowed only five minutes, and should not be permitted to speak more than twice on the same subject; similar measures were also taken at the Transit Committee. Such measures of coercion cannot be applied to this Conference, but we are all tired, and are, moreover, feeling the necessity of returning to our own affairs and to our official duties at home; I therefore appeal to speakers to do their best both to shorten the discussion as much as possible, and to prompt the officers of the Conference to hasten on the work. We cannot prolong indefinitely our stay in the hospitable town of Barcelona.

At the close of Saturday's Meeting, M. Ortuño, the Delegate for Spain, made with much justice some remarks which were occasioned largely by a delay in the distribution of documents. The Transit Regulations and the Transit Convention were distributed separately, in accordance with the decision taken by the Conference at the beginning of its work, to the effect that the Formal Articles as a whole should be discussed after the Conventions themselves had been dealt with. As these Formal Articles were intended to refer to all the Conventions, it was thought better to discuss them in this way than in connection with each Convention separately. As soon as the formalities are completed, the Regulations, or rather the Technical Articles, will stand alone, and it would therefore be superfluous to attach the Formal Articles separately to each Convention. They are really only provisional, in that once the Powers have acceded to their terms, the text of them is no longer of importance; they will remain in the archives of the various States. It is the Technical Articles which will be taken into consideration by the Governments and by the tribunals responsible for judging any disputes which may arise. It was for this reason that, in conformity with numerous precedents, the legal experts advised us to deal separately with the Technical Articles of the Convention. As the text of the latter had not been circulated, it was natural that a certain uneasiness should arise, and that it should be asked why the Formal Articles had been severed from the Conventions; this was authorised, as I have just explained, by a decision taken in general for all the Conventions.

You now have the Formal Articles before you, but I would ask you again to postpone the discussion on them until a final text has been established for all the Conventions, in view of the fact that these Formal Articles will apply to all of them. I propose passing without delay to the discussion of the Technical Articles or Regulations, on the understanding, however, that until the Formal Articles have been drafted, approved and signed, the Convention will not be valid. It will only become so when we are all in agreement, and when every point in connection with the Conventions has

been explained. Any enquiries will be welcomed by the Officers of the Conference, who will endeavour to satisfy them in such a way as will not leave any Delegate in doubt upon any point. There should be no kind of mystery upon the subject.

If there is no objection, we will now read the Technical Articles, but they will only come into force when all the Formal Articles have been studied by the Conference with the utmost freedom and, I hope, in all sincerity.

M. Ortuño will now speak.

M. ORTUÑO (Spain ; speaking in French). — In view of the President's remarks, I will endeavour to be brief, and I shall be considerably aided in this to-day by the explanations which he has been good enough to give us on the question which I raised at the last meeting. I must explain, however, that when I spoke on that occasion I had before me a document bearing the title *Draft Convention*, whereas upon reading the first and following articles, I found that the word *Regulations* had been used, and I had no further information on the subject. Sir Cecil Hurst was good enough to reply to my enquiry, the import of which was quite clear to the Conference. I asked to speak in order to say something about the powers which I consider a Drafting Committee should possess, the procedure to be followed,—in fact, to discuss the whole question. The Conference called a certain document a *Convention*, and handed it over to a Drafting Committee, which, without any apparent reason for so doing, handed us back a document entitled *Regulations*,—a totally different thing. This morning, however, I have received the remaining document mentioned by the President. We were told by Sir Cecil Hurst that the Regulations formed only a part of the Convention, and that the latter contained besides certain formal articles, and now the President quite rightly substituted for the word *Regulations* the words *Technical Articles*. I think it would be preferable, and would avoid confusion, to speak of the Convention as consisting of *Formal Articles* and *Technical Articles*. However, the Conference is now in possession of the facts, and we shall know shortly whether it accepts this view.

On looking over the Formal Articles just now, I gained the impression that the fact of signing the Convention implies a formal engagement to observe in their entirety the terms of the Regulations or Technical Articles. It seems to me that the matter is now one of secondary importance, and involves a question of form rather than one of substance. Personally, therefore, I see no objection to accepting this new form for the Convention, and would only suggest that we try to find another word than the word *Regulations*, which may, I think, lead to confusion.

M. WINIARSKI (Poland; speaking in French). — I should have liked to make some remarks on the basic point of the question, but if the Conference accepts your proposal to postpone the matter, I will reserve my observations for the present.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Is the word *Regulations* likewise reserved? I do not consider it a suitable word.

THE PRESIDENT (speaking in French). — I really think, after the remarks made by MM. Ortuño and Winiarski, there can be no further objection to reserving the word *Regulations* until later in the hope of finding a better word. What is Sir Cecil Hurst's opinion?

Sir Cecil HURST (Great Britain; speaking in French). — Certainly. Let us postpone the matter, and try to find, if possible, a synonym which will give satisfaction.

M. WINIARSKI (Poland; speaking in French). — I suppose we shall also reserve the expression *High Contracting Parties*?

THE PRESIDENT (speaking in French). — Certainly. The Officers of the Conference will see to it that the words *High Contracting Parties* are retained until the formal articles are discussed.

M. LANKAS (Czecho-Slovakia; speaking in French). — Will the other conventions be drafted in the same way by the Drafting Committee?

THE PRESIDENT (speaking in French). — They will be drawn up in the same way, the questions as to the term *High Contracting Parties* and as to the Regulations being reserved.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — May I ask what the powers of the Drafting Committee are? Without consulting the other Committees, they have drawn up texts completely changing the form of the instrument, and giving the character of Regulations to what has hitherto been treated as a Convention. I have never heard that a Drafting Committee could, on its own initiative, modify the substance or the form of matters referred to it, unless this is done in accordance with decisions taken by the Committee which referred the matters in question.

THE PRESIDENT (speaking in French). — The Drafting Committee has no powers of its own. It proffers its help and advice to the Conference, but the Conference remains supreme in everything. We—the Officers of the Conference and the legal experts—are endeavouring to arrive at a form of words to submit to you, but the powers and the authority of the Drafting Committee are absolutely nil; should the Conference be dissatisfied with any detail of the work done, it has an absolute right of veto. We are grateful to the Drafting Committee for their assistance, but we must remember that it is friendly aid and nothing else.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Thank you. But if this Drafting Committee, which has no authority, makes important changes in the documents which we refer to it, we shall be under the necessity of discussing them a second time, and referring them once again for examination to a Sub-Committee. We shall never come to an end. The Drafting Committee ought to confine itself to making the necessary corrections in the documents referred to it, and should not propose important changes.

THE PRESIDENT (speaking in French). — I can assure you that the Drafting Committee, which has worked under the Chairmanship of your President, is most careful to respect the decisions taken by this Assembly. If there has been any mistake, it is I who must make my apologies, and I assure you that we will do our best from now onwards to fall in with your desires. This will appear in the records of the meeting.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Thank you, Mr. President; my remarks were only intended to avoid any repetition in the work.

DISCUSSION OF ARTICLE 1 (contd.)

We can now proceed to discuss the Technical Articles. We had read Article 1 (1) and had paused at the word *Regulations*. As this word is reserved, after reading the Article I will ask whether anyone has anything to say concerning the remainder of the text, which reads as follows :

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.

Traffic of this nature is termed in these Regulations traffic in transit.

(1) See p. 216.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I wish to draw the attention of the Conference to a proposal made by our delegation upon a question of principle,—that of the exclusion of vessels from the Transit Convention. I refer to the sentence : *when the passage... beginning and terminating beyond the frontier of the State across whose territory the transit takes place*. A vessel cannot possibly fulfil the conditions contained in this definition of transit, because the present Convention regulates transit, whether by waterway or railway; transit by river, and that alone, is regulated by the Waterways Convention. During the meetings of the Committee we asked for the omission of the word *vessels*, which should only appear in the Waterways Convention. I make this remark to fulfil a two-fold duty—that of carrying out the instructions given me by my Government and that of suggesting a course calculated to avoid many difficulties in the future. If the Conference cannot see its way to agree with us, I should like my observations to appear in the Final Act. This is one of the points not mentioned in M. Neujean's Report.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — In drawing up my Report, I did, in fact, wonder whether it would not be best to reproduce everything that was in the records of the meeting,—a much simpler course both for myself and those who collaborated with me. We agreed, however, to summarise the discussion, giving special prominence to those matters which had occupied the attention of the Committee for the longest time. Thus, certain questions are given special mention in my Report. If I did not see fit to mention the Serbian Delegate's remark on the subject of vessels, it was because, after discussing the question, the Committee decided almost unanimously to reject the proposal. If the Honourable Member insists that the incident should appear in the Report, I am willing to give him satisfaction, but in that case it is to be feared that other delegations, which have raised questions of the same kind, or even of quite a different kind, will likewise demand the inclusion of their observations in the Report.

M. POLITIS (Greece; speaking in French). — Certainly they would.

M. NEUJEAN (Belgium; speaking in French). — In that case it will, in my opinion, be most regrettable that the Conference imposed this task on the Rapporteur and all those who have toiled at it day after day.

THE PRESIDENT (speaking in French). — Does anyone else wish to speak on Article 1?

Article 1 was adopted.

DISCUSSION OF ARTICLE 2

I will now read Article 2 :

Subject to the other provisions of these Regulations, the measures taken by States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — What is the meaning of the words *customary... reserves* at the end of the Article? Is this a reference to the reserves existing before the war?

THE PRESIDENT (speaking in French). — Agreement was reached on this text both in Sub-Committee and in Committee. Do the terms employed seem obscure?

M. BONNET (France; speaking in French). — We intended in particular to reserve for customs authorities the right of search.

THE PRESIDENT (speaking in French). — The reference is specially to the right of search in the case of officials boarding vessels for the purpose of ensuring that everything is in order. The matter will be mentioned in the records of the meetings.

M. BIGNAMI (Italy; speaking in French). — I was a Member of the Sub-Committee. This provision was suggested by M. Serruys, who is a recognised authority on the matter, and the intention was to reserve not only customs rights, but also fishing rights or any other special regulations enacted by particular States.

THE PRESIDENT (speaking in French). — This explanation is clearer than my own and must appear in the record of the meeting.

I will put the Article to the vote.

Article 2 was adopted.

DISCUSSION OF ARTICLE 3

I will now read Article 3 :

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

M. SINIGALIA (Italy speaking in French). — At the end of the article, it would be better to say *ces droits et taxes pourront être réduits* instead of *ces droits ou taxes pourront être réduits*.

THE PRESIDENT (speaking in French). — There is a shade of difference in the two meanings; the word *ou* should be retained to show that we are not considering these two classes of dues as a whole, but as alternatives.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like to draw attention to the expression *traffic*, which has taken the place of the words *persons, luggage, goods, etc.* Is the word *traffic* a good and adequate rendering of the words *persons, luggage, goods, etc.*? This point might be noted in the records.

THE PRESIDENT (speaking in French). — It shall be done. The original text stands to show the meaning of the word *traffic*, whilst in the general provision on traffic in transit it is understood that the word *traffic* includes all traffic in transit.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It would be desirable to change the word *ou* to *et* in accordance with the request of the Italian Delegation.

THE PRESIDENT (speaking in French). — No; the text proposed by the Drafting Committee is better on this point.

Sir Cecil HURST (Great Britain; speaking in French). — With regard to M. Avramovitch's remark on the subject of the words *traffic in transit* at the beginning of Article 3, may I refer you to the last paragraph of Article 1, where you will find a definition of these words. This paragraph was added by the Drafting Committee on a proposal, made by the legal experts, to add the following paragraph to Article 1 : *traffic of this nature is termed in these Regulations traffic in Transit.*

The legal experts desired the Drafting Committee to adopt this text in order to simplify the wording of all the Technical Articles, but the meaning of the words *traffic in transit* is sufficiently defined by the last paragraph of Article 1.

THE PRESIDENT (speaking in French). — May I say once for all that the words *traffic in transit* as defined in Article 1 cover all kinds of traffic.

If there are no further objections, I will put Article 3 to the vote.

Article 3 was adopted.

DISCUSSION OF ARTICLE 4

I will now read Article 4 :

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I have only one very small observation to make on the English version of Article 4. At the beginning of this article the words *routes operated* seem to me to be rather an awkward rendering of the words *voies exploitées*, but I cannot for the moment suggest better words. Would it not be possible to adopt these articles, whilst reserving this expression?

THE PRESIDENT (speaking in French). — We will, then, reserve these words in the English text.

I put Article 4 to the vote.

Article 4 was adopted.

DISCUSSION OF ARTICLE 5

I will now read Article 5 :

No Contracting State shall be bound by these Regulations to afford transit for passengers whose admission into its territory is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and good stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in these Regulations shall affect the measures which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party, or which may be concluded hereafter, particularly Conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general Conventions intended to prevent any infringement of the rights of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

Sir Louis KERSHAW (India). — In the English text of the Article I find the words *reasonable precautions* as a translation of the French words *précautions nécessaires*.

THE PRESIDENT (speaking in French). — The rendering of the word *reasonable* by the word *nécessaires* was suggested by Sir Hubert Llewellyn Smith at the Drafting Committee, and I hope the Indian Delegate will accept it. His remark will be registered in the records of the meeting.

I will put Article 5 to the vote.

Article 5 was adopted.

DISCUSSION OF ARTICLE 6

I will now read Article 6 :

These Regulations do not of themselves impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their baggage, or to the flag of a non-Contracting State, nor to the goods, nor to coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-Contracting State, except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article, goods in transit under the flag of a Contracting State shall, if no transshipment takes place, benefit by the advantages granted to that flag.

Has anyone any remarks to make on Article 6?

I will now put the Article to the vote.

Article 6 was adopted.

DISCUSSION OF ARTICLE 7

I will now read Article 7 :

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country, may, in exceptional cases, involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

M. BIGNAMI (Italy; speaking in French). — It is understood that Article 7 is defined by the Rapporteur when he states that *Article 7... now allows the imposition of restrictions on freedom of transit whenever the vital interests of a country are involved*. It is essential that this should be the interpretation given to the text.

THE PRESIDENT (speaking in French). — It is understood that the Report to which M. Bignami has just alluded will be published, and the text of Article 7 will be defined by the commentary he has just quoted.

M. BIGNAMI (Italy; speaking in French). — Thank you, Mr. President; that will make the text much clearer.

M. LANKAS (Czecho-Slovakia; speaking in French). — It would perhaps be well to bring the terms of the Report into line with the relevant portion of Article 15 of the Draft Convention on Waterways.

THE PRESIDENT (speaking in French). — This shall be done. The text of the Waterways Convention reads : *for a period as short as possible*. The two versions will be identical.

M. LANKAS (Czecho-Slovakia; speaking in French). — Thank you, Mr. President.

THE PRESIDENT (speaking in French). — Are there any further remarks on the subject of Article 7?

I will put it to the vote.

Article 7 was adopted.

DISCUSSION OF ARTICLE 8

I will now read Article 8 :

These Regulations do not prescribe the rights and duties of belligerents and neutrals in time of war. The Regulations shall, however, continue in force in time of war so far as such rights and duties permit.

M. VALLOTTON (Switzerland; speaking in French). — The second part of this Article, consisting of a Recommendation which was to form an integral part of the Article, has obviously been omitted.

M. CARLIN (Switzerland; speaking in French). — May I follow up M. Vallotton's remarks by observing that the Recommendation for which we voted has certainly been omitted. I may recall that it read as follows :

The Conference recommends that the League of Nations shall, as soon as possible, invite its members to meet with a view to drawing up new Conventions for the regulation of the Rights and Duties in regard to transit of belligerents and neutrals in time of war.

This Recommendation was appended to Article 8 as a compromise, in order to allow of the acceptance by certain States of the first paragraph as submitted to the Plenary Committee by the Sub-Committee. It was at the meeting of March 22nd that the Plenary Committee of the Conference, under the chairmanship of M. Loudon, dealt with the question. The impression gathered from the records of that meeting, which I have here before me, was undeniably that the Recommendation was to be embodied in the Article, whereas the Drafting Committee has made no reference whatever to it. Of course it may quite conceivably be considered that a Convention cannot logically include a Recommendation, and it was probably this consideration which gave rise to the decision of the Drafting Committee.

THE PRESIDENT (speaking in French). — This Recommendation was yesterday, at my request, relegated to the Final Protocol. I drew the attention of the Conference to the question whether the two Recommendations which have been adopted should be separated from the text of the Convention. These two Recommendations were not omitted at all. They have been adopted for insertion in the Final Protocol.

M. CARLIN (Switzerland; speaking in French). — May I thank the President for his explanation? It cannot, however, be denied that in the draft Regulations at present under discussion, the Recommendation is actually omitted. My point is this : the general impression was that this Recommendation would appear in Article 8, and would form one of its paragraphs; if my colleagues will consult the records of the meeting of March 22nd, they will, I think, agree with me. As I said just now, the Drafting Committee may indeed have considered that a Recommendation could not well be embodied in Article 8. I would recall, nevertheless, that some Conventions, particularly the one on Railways, consist entirely of Recommendations, every Article beginning with the words *The Contracting States consider it desirable...* For this reason I fail to see the objection to including the Recommendation in the Article itself in some such form as the following : *The Contracting States consider it highly desirable that the League of Nations...* May I recall the fact that this Recommendation was adopted at the meeting of March 22nd by a large majority,—twenty-three votes to five. Should the Conference, however, still see an objection to including it,—the contention of the Drafting Committee having perhaps more force when applied to

Technical Regulations than to a Convention, —I should be willing, speaking on behalf of the Swiss Delegation, to declare myself satisfied if the Recommendation were included in the Final Protocol.

THE PRESIDENT (speaking in French). — The Recommendation will now be inserted in the Final Protocol, and not merely in the records of the meeting.

If no-one has any further observations to make on the subject of Article 8, I will put it to the vote.

Article 8 was adopted.

DISCUSSION OF ARTICLE 9

I will now read Article 9 :

These Regulations do not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

Has no-one any remarks to make on Article 9? I will put it to the vote.

Article 9 was adopted.

DISCUSSION OF ARTICLE 10

I will now read Article 10 :

The coming into force of these Regulations will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before..... 1921 (subject, however, to Article 19 of the Covenant).

In consideration of such agreements being kept in force, Contracting States undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of these Regulations the modifications required to bring them into harmony with such provisions, so far as the geographical economic or technical circumstances of the countries or areas concerned allow.

Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of these Regulations, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, Contracting States may in matters of transit enter into regional understandings consistent with the principles of these Regulations.

M. CARLIN (Switzerland; speaking in French). — In order to bring Articles 1 and 2 into complete agreement with each other, I propose that at the beginning of the second paragraph, for the words in the French text *en raison de ce maintien* should be substituted the words *en raison de cette non-abrogation*. There is no mention in the first paragraph of agreements remaining in force, only of their not being cancelled. It seems to me that the wording I have suggested would be better.

THE PRESIDENT (speaking in French). — It is certainly better from the point of view of the French; it is more accurate.

M. SCASSI (Greece; speaking in French). — Would not the wording be still better if for the words *en raison du maintien* we substituted the words *en conséquence*?

THE PRESIDENT (speaking in French). — It would certainly be preferable.

M. LANKAS (Czecho-Slovakia; speaking in French). — A little further on we have *accords ainsi maintenus*, and I therefore consider it would be better to keep the word *maintien*.

THE PRESIDENT (speaking in French). — The word *maintenu* here is French; the word *maintien* is not. The words *en conséquence* which have been proposed appear to me to give satisfaction.

M. BIGNAMI (Italy) (speaking in French). — I do not think we can make the proposed change, because the second paragraph does not follow on from the first.

Sir Cecil HURST (Great Britain). — There would certainly be a discrepancy between the English and French texts, because the expression *en conséquence* is weaker than the English expression *in consideration of*.

THE PRESIDENT (speaking in French). — As several delegates seem to be of opinion that the text would not be so clear if the expression *en conséquence* were employed, the Conference might adopt M. Carlin's motion to substitute for the words *du maintien* the words *de cette non-abrogation*.

M. PIERRARD (Belgium; speaking in French). — Who is going to fix the date at present left blank in the first paragraph of this article?

THE PRESIDENT (speaking in French). — The question has been under consideration by the Officers of the Conference, but the choice of the date has been left to the Conference. We are inclined to think that the best date would be May 1st, 1921, and we therefore propose it.

M. PERIETZEANO (Roumania; speaking in French). — The best date would be to-day.

THE PRESIDENT (speaking in French). — We might choose the date of signature, but not to-day's date.

M. CARLIN (Switzerland). — May 1st seems to me rather too near at hand. The intention of the Conference is to maintain in force any agreements which might be entered into before the coming into force of the Convention to which these Regulations will be appended. In my opinion it is difficult to fix a date since, according to the text, the Convention will not come into force until it has been signed by five Powers.

THE PRESIDENT (speaking in French). — You have the choice of three dates : a fixed date, the date of signature or the date of the coming into force of the Convention. The best one is the date of signature, because from that time onward the States will have had due notice.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I hope that the Conference will decide to insert a fixed date, and not the date of signature of the Convention or the date at which it comes into force. Both these dates are at present doubtful, and it is of the greatest importance that the date in this article should not allow of any evasion of its terms by the conclusion of Conventions between the present time and the date fixed. Personally, I should greatly prefer the present date, as was suggested by the Roumanian Delegate, or a date in the past, such as April 1st, which would certainly prevent any evasion of the kind I have just mentioned. But as a compromise I should be prepared to agree to May 1st. We want to prevent the possibility of the conclusion, during the interval, of understandings which would then benefit by the stipulations of Article 10 with regard to existing Conventions; for it was clearly neither our own intention nor that of the Sub-Committee to give to Conventions concluded after the discussion at Barcelona the benefit accorded to Conventions already existing.

M. MATSUDA (Japan; speaking in French). — With regard to Article 10, our Delegation declared that it would not agree that treaties should be kept in force when they were contrary to the principles of the Convention. I received instructions to

this effect from my Government, and communicated with them, and to-day, actuated by a spirit of conciliation, we are prepared to accept the article. If, however, an indeterminate form of words were proposed for the date in question, whereby treaties might be concluded before the date of the coming into force of the Convention,—if it were proposed, for instance, that the terms of this Convention should not be applied until next year, or even several years later,—we could not accept this, because it would be contrary to the principles which we desire to see applied. I therefore support the motion of the President, seconded by Sir Hubert Llewellyn Smith, to adopt May 1st as the date.

M. PERIETZEANO (Roumania; speaking in French). — If any date is inserted in this article, it should be to-day's. Paragraph 3 contains the following words: *Contracting States also undertake not to conclude in future...* To me, the future and the past are separated by the moment at which we are speaking. Then there is another reason. A pledge does not need to be signed in order to become valid, and the document and signature together are the concrete proofs that an engagement has been entered into, but that engagement exists from the moment when the two parties have come to the agreement. In this case, the two parties are States. We do not possess full powers to pledge our Governments,—it was agreed that the Convention should be adopted subject to subsequent ratification,—but nevertheless the pledge exists from the moment when the vote is taken. Certain documents may indeed be signed afterwards, in order to exclude any possibility of dispute, but the actual pledge exists from the moment of voting, and therefore, from that moment begins the future time mentioned in paragraph 3; and, moreover, agreements made after that moment which are contrary to the provisions of this Convention, will be void in law. I do not see why an interval should be allowed during which conventions could be concluded contravening the terms of the present one. We must not incur the risk that before May 1st a State whose representative here had voted for the Convention should conclude a Convention of a contrary nature. If a special date is not appointed in the first paragraph of this article, and if that of the date of signature is adopted instead, the date will be different for each State, for every State will not sign the Convention on the same date. In my opinion, the date we choose should be that upon which all the States represented here voted at Barcelona for the Convention.

THE PRESIDENT (speaking in French). — I consider that the date May 1st gives us a convenient *via media* which conforms to all the requirements we have just heard expressed. The Conference will surely be able to accept it.

M. PERIETZEANO (Roumania; speaking in French). — The date May 1st should also be mentioned in paragraph 3, since the "future" is mentioned there.

THE PRESIDENT (speaking in French). — The "future" signifies any time after the engagement has been entered into, and that is May 1st.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — Under the terms of No. 6 of the formal articles, the Convention will not come into force until it has been ratified by five Powers, and the exact date of this coming into force will be ninety days after the receipt by the Secretary-General of the fifth ratification. How, then, can we now fix a special date and say that after May 1st certain agreements concluded between States will be invalid?

THE PRESIDENT (speaking in French). — That is by no means the same thing. The date which we are now fixing has nothing to do with the actual Convention, or with the date of signature of the Protocols.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — But have we here the power to fix a date prior to the coming into force of the Convention?

THE PRESIDENT (speaking in French). — Certainly. If the Convention never came into force, this clause would be void. We are merely fixing the date after which the different Powers may not do this or that.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — I should have thought that the date to be inserted in this Article 10 ought to be subsequent to, or at least identical with, that of the coming into force of the Convention.

THE PRESIDENT (speaking in French). — The Conference will realise that the first paragraph of Article 10 has no connection whatever with the actual fact of the Treaty being signed : it is merely a question of registering the promise given by the different Governments not to conclude other conventions. Naturally if the Governments failed to ratify the Convention, the promise would lapse automatically, but that does not relieve us of the necessity of choosing a moment from which it will date.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — I understand your interpretation, but I still think that this date ought to be subsequent to that of the coming into force of the Convention.

THE PRESIDENT (speaking in French). — The Conference will give its verdict.

M. SCASSI (Greece; speaking in French). — I think it would be nearer our intention to choose a date prior to the coming into force of the Convention, for instance April 1st. Every delegation would then probably be satisfied.

THE PRESIDENT (speaking in French). — In any case the date must be an arbitrary one; and there is no more reason for choosing April 1st than May 1st, but May 1st seems to me to have the most support, and I shall, therefore, propose it.

M. WINIARSKI (Poland; speaking in French). — I have the same apprehensions as the Venezuelan Delegate. I think that the Conference would do well to reflect a little before pronouncing upon what I consider a serious question. States are not bound until ratification has taken place, and it may happen that for some reason or other a State does not ratify for six or seven months. Would there not be a certain danger in paralysing the whole international activities of the various Governments during that period? The fairest method would appear to me to be to fix a date subsequent to ratification.

THE PRESIDENT (speaking in French). — It is quite clear that, if a State does not ratify, no engagement exists. If a State wishes to ratify, it must enter into the spirit of the present Convention by concluding no further Conventions after such and such a date.

M. WINIARSKI (Poland; speaking in French). — It appears to me dangerous to allow this period of uncertainty.

THE PRESIDENT (speaking in French). — Would the Conference like to postpone further discussion on the point to a subsequent meeting? As every possible view on the subject seems to have been brought to light, we will proceed to vote. I put the following question to the vote : does the Conference wish to defer this question of the date, or to settle it now?

The Conference decided by 19 votes to 9 to vote immediately on the question of the date.

THE PRESIDENT (speaking in French). — I put to the vote the date proposed,— May 1st.

M. SCASSI (Greece; speaking in French). — Why not April 1st? It is always better to be cautious,—to lock the door and take the key; it should never be left in the lock.

THE PRESIDENT (speaking in French). — The voting has begun, and you cannot speak now.

The date May 1st was adopted by 19 votes to 7.

I will now put to the vote Article 10 as amended.

Article 10 was adopted.

REQUEST OF THE CHINESE DELEGATE

M. TSANG-OU (China; speaking in French). — On April 4th the Chinese Delegation circulated a proposal on the subject of the interpretation of Article 10, which is of great importance for certain countries, particularly our own. It is not in the form of a statement or proposal put forward by the Chinese Government, but is merely an attempt to determine the exact meaning of Article 10. It reads as follows :

It is agreed that the opening of routes of communication and ports which are to be available for free transit and navigation by virtue of the coming into force of the Barcelona Convention, must not be interpreted as extending in any way the rights of those Contracting Powers which already, by the terms of previous treaties, enjoy preferential treatment upon certain waterways and in certain ports already open to their own trade.

On routes and in ports newly thrown open to traffic, only the régime of the new Conventions is applicable for all the Powers signatory to previous treaties. It is agreed likewise that Contracting Powers which have not signed previous treaties will come exclusively under the régime of the new Conventions, no distinction being made between waterways and ports already opened and those which, in virtue of this régime, will be open to international traffic.

May I remind you that in China some ports are open to foreign commerce and others are not? If the Conference agrees with my interpretation of Article 10, I propose to insert it in my report and to submit it to my Government, which, if it takes the same view on the subject, will probably apply its principles retrospectively.

I will also request that this interpretation should be inserted in the records of the meeting, not as a proposal made by the Chinese Government, but simply as an interpretative passage.

THE PRESIDENT (speaking in French). — It is agreed that the Conference will not come to any decision without knowing the views of the Plenary Committee. I suggest that this proposal be referred for examination to the Plenary Transit Committee, which will meet this afternoon in order to examine M. Bignami's report and the Brazilian proposal (1).

Sir Cecil HURST (Great Britain). — There is a slight error in the English text of Article 10. The words *subject however to Article 19 of the Covenant* have been inserted in error. They do not appear in the French text.

THE PRESIDENT (speaking in French). — Is there no opposition?

We will omit from the English text the last words of the first paragraph.

DISCUSSION OF ARTICLE 11

I will now read Article 11 :

These Regulations do not entail in any way the withdrawal of facilities which are greater than those provided for in the Regulations and have been granted, under conditions consistent

(1) See pp. 186 *et seq.*

with their principles, to traffic in transit across territory under the sovereignty of a Contracting State. The Regulations also entail no prohibition of such grant of greater facilities in the future.

Article 11 was adopted.

DISCUSSION OF ARTICLE 12

I will now read Article 12 :

In conformity with Article 23 (e) of the Covenant, any Contracting State which can establish a good case against the application of any provision of these Regulations in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision to some or all of its territory.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I propose that in the French text of this article the words *à tout ou partie de son territoire* (in some or all of its territory) should be replaced by *étant entendu que les principes de la liberté du transit doivent être observés dans toute la mesure du possible* (it being understood that the principle of freedom of transit must be observed to the utmost possible extent). That is the formula which occurs in all the other exception clauses. I have consulted with the representatives of France, Belgium and Italy, and it seemed to us desirable to make the exception clauses uniform by the invariable addition of a formula of this kind at the end.

M. BONNET (France; speaking in French). — The French Delegation agrees with the British Delegation that the words *in some or all of its territory* should be omitted, and that the sentence should be added which the British Delegate has just read. The Belgian and Italian Delegations are also in agreement.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We also agree, but at the beginning of the article I should like to insert after the word *Covenant* the words *of the League of Nations*.

THE PRESIDENT (speaking in French). — It would certainly be clearer if the text read as follows : *In conformity with Article 23 (e) of the Covenant of the League of Nations*. Does anyone else wish to speak on Article 12?

I will put it to the vote in its modified form.

Article 12 was adopted.

DISCUSSION OF ARTICLE 13

I will now read Article 13 :

Any dispute as to the interpretation or application of these Regulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — The Brazilian Delegation would prefer, and, I think, rightly, to alter the first line of the article as follows : *Any dispute between States.*

THE PRESIDENT (speaking in French). — It would certainly be better.

Sir Cecil HURST (Great Britain). — *Between Contracting States.*

M. LANKAS (Czecho-Slovakia; speaking in French). — In that case the word *States* would occur twice in the French text.

THE PRESIDENT (speaking in French). — The sentence might read as follows : *A défaut d'entente directe, tous différends entre États contractants...*

M. REINHARDT (Austria; speaking in French). — Disputes might arise between non-Contracting States, and therefore it would be well to reflect before inserting the word *Contracting*.

THE PRESIDENT (speaking in French). — Yes, non-Contracting States might accept the jurisdiction of the Permanent Court of Justice. We might say *A défaut d'entente directe, tous différends entre États relatifs à l'interprétation...*

M. LANKAS (Czecho-Slovakia; speaking in French). — Yes.

Sir Cecil HURST (Great Britain). — We propose that this wording should only be adopted provisionally, in order that the legal advisers may have time to consider the point further.

THE PRESIDENT (speaking in French). — There are several points to which we shall have to return; we can submit the question of the exact wording to the legal advisers.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In the second paragraph, according to the Committee's wording, the text reads *In the manner laid down in Article 40 of the Statute of the Permanent Court*. The Drafting Committee is acquainted with the contents of this Article 40, but we are not. Could not some indication be given of its contents, or might it perhaps be read?

THE PRESIDENT (speaking in French). — I will read it.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting Parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

This constitutes the registration by the Registrar of the opening of the proceedings. The reservation being made in connection with the words *Contracting States*, I will put Article 13 to the vote.

Article 13 was adopted.

M. Bignami's report upon the Franco-Indian amendment not yet having been discussed, the vote on the Convention as a whole is deferred until the beginning of the next Meeting.

The meeting adjourned at 1-45 p.m.

On the same day, at 5 p.m., the Thirteenth Meeting of the Plenary Committee was held, at which these two Reports were examined. The Record of this Meeting, containing also the text of the Chinese Delegate's Declaration concerning Article 10, and the proposal of M. Vallotton concerning Denunciation, appears in Part II, with the other records of that Committee (see p. 186). At the beginning of this meeting Sir Cecil Hurst made a statement on the subject dealt with at the Twentieth Meeting of the Conference; this follows below.

VERBATIM REPORT OF THE THIRTEENTH MEETING

(Monday, April 11th, 1921, at 5 p.m.)

The Meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

REPORT ON ARTICLE 13 OF REGULATIONS

THE CHAIRMAN (speaking in French). — Sir Cecil Hurst will report to us on the question which was raised this morning at the close of the plenary meeting, with regard to the wording of the first sentence of the Article on the disputes.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — You will remember referring to the Jurists' Committee the question of the wording of the first sentence of Article 13 on the settlement of disputes, which was raised at the close of this morning's meeting. In the first place, were the words *between Contracting States* (*entre les États contractants* in the French text) to be added after the words *any dispute* (*tous différends* in the French text)? The Jurists' Committee considered that if the words *contracting* (*contractants* in the French text) could be dispensed with, there would be no harm in adding the words *between States* (*entre les États* in the French text). In the second place it was proposed to omit after the words *which is not settled directly* in line 2, the words *between the States themselves*. The Jurists' Committee fears that the omission of these words will alter the original meaning of the sentence, which implied an agreement for the settlement of disputes. The sentence in its present form has a wide meaning, and to modify it would be to risk losing the benefit afforded by this article.

THE PRESIDENT (speaking in French). — The phrase would then read as follows : *A défaut d'entente directe entre les États, tous différends entre les États, relatifs à l'interprétation...* instead of *A défaut d'entente directe entre les États, tous différends relatifs à l'interprétation...*

M. NEUJEAN (Belgium; speaking in French). — I should like to propose drafting the article as follows : *A défaut d'entente directe entre les États, tous différends qui surgiraient entre eux...*

Sir Cecil HURST (Great Britain). — The difference between the text proposed by the Rapporteur and the original text is microscopic...

M. NEUJEAN (Belgium; speaking in French). — In fact, there is none.

Sir Cecil HURST (Great Britain; speaking in French). — I do not think that there is any difficulty about this wording from the legal point of view.

THE PRESIDENT (speaking in French). — The proposed wording is quite clear.

M. LASSALA (Spain; speaking in French). — The word in the French text *relatifs* should be replaced by the word *sur*. In the text the word *relatifs* is a long way distant from the word *différends*.

THE PRESIDENT (speaking in French). — We could say *A défaut d'entente directe entre les États, tous différends qui surgiraient entre eux relativement à l'interprétation...*

Has no-one anything further to say on this text? I will put this text to the vote.

The text was adopted.

.....

TWENTY-FIRST MEETING OF THE CONFERENCE

(Monday, April 11th, 1921, at 6 p.m.)

DISCUSSION OF THE CONVENTION

The Meeting opened with M. Hanotaux in the Chair.

DISCUSSION OF PREAMBLE AND ARTICLES 1-8

THE PRESIDENT (speaking in French). — We are now entering upon a discussion of the Formal Articles, which constitute the Convention on Freedom of Transit.

[Names of Powers] :

Desirous of making provision to secure and maintain freedom of communications and of transit,

Being of opinion that in such matters general Conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States without prejudice to their rights of sovereignty or authority over routes available for transit, and that it is desirable that States should mutually assist one another in order to facilitate as much as possible the putting into practice of this principle,

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the Final Act of such Conference,

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway adopted thereat,

Wishing to conclude a Convention for this purpose, have appointed as their plenipotentiaries :

Sir Louis KERSHAW (India). — I suggest that some word or words be inserted in this paragraph to make it clear that the Convention applies only to transit by rail or waterway. This intention was expressed in M. Neujean's Report, but in my opinion it would be desirable to make it clear in the Preamble to the Convention.

THE PRESIDENT (speaking in French). — We might employ the following text :

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway, adopted at Barcelona, to the exclusion of transport by road or air.

But can a negative formula be introduced into a Convention?

Sir Cecil HURST (Great Britain). — The present text appears to me quite clear, and I am of opinion that it is not necessary to make an insertion of the kind proposed by Sir Louis Kershaw.

THE PRESIDENT (speaking in French). — I quite agree; this would be a pleonasm. When we affirm a series, we only affirm the terms of that series, and it is obvious that all the rest is excluded. Moreover, this observation, which I make in my capacity as President, will be entered in the records of the meeting and will carry out the conception of a commentary, to which allusion has so often been made. This, I think, is

enough, and I beg the Delegate for India not to insist on the adoption of a negative formula which can not have any practical effect.

Sir Louis KERSHAW (India). — The insertion of the President's statement in the records satisfies me, seeing that the jurists of the Conference prefer that no addition should be made to the text itself.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In paragraph 5 mention is made of the *regulations relating*. It is understood that reservation is made of this word *regulations* and everything connected with it.

THE PRESIDENT (speaking in French). — It is quite understood that all that is reserved.

M. SIBILLE (France; speaking in French). — May I draw the attention of the Conference to the following words : *having accepted the invitation of the League of Nations to take part in a Conference at Barcelona, which met on March 10th, 1921, and having taken note of the Final Act of such Conference...*

I think it would be preferable to say *...and having signed*, or at least *...and having approved the Final Act* of this Conference. It would not be admissible for a delegate to sign this Convention, while refraining from signing the Final Act and reserving the right to dispute and criticise it.

THE PRESIDENT (speaking in French). — That point will be reserved, like the question of the regulations. I should prefer the word *approved* rather than *taken note*, as in my opinion this latter term is inadequate.

M SIBILLE (France; speaking in French). — We agree.

M. LANKAS (Czecho-Slovakia; speaking in French). — The task of the Drafting Committee is to find formulas and texts, while at the same time conforming to the decisions taken by the Committees. You will find in paragraph 4 of the Preamble the following words : *...and that it is desirable that States should mutually assist one another in order to facilitate as much as possible the putting into practice of this principle.*

I ask the Rapporteur to be so good as to tell us whether this amendment was accepted by the Committee. I think I remember, on the contrary, that this text was strongly opposed (1). I accepted it. It is obvious indeed that States must help each other, in order to facilitate the putting into practice of the principles of freedom of communications. I should be very grateful if the Rapporteur would enlighten us on this subject.

Sir Hubert LLEWELLYN SMITH (Great Britain). — As I was the Rapporteur of the Sub-Committee on Article 10, I think I can explain the point raised by M. Lankas. To that Committee was referred not only Article 10, but also the Preamble, because a number of amendments had been moved to the Preamble which dealt with the question of the relation of the present Convention to previous Conventions. The Sub-Committee reported to the Transit Committee that they had embodied in Article 10 all the amendments to the Preamble which could suitably find a place there, and they recommended that the remaining ones, including one moved by the Delegate of Austria and another by the Delegate of Chile, be referred to the Drafting Committee. This suggestion was adopted by the Transit Committee. The Drafting Committee has therefore had these amendments before it.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If I remember aright, the Committee never examined the Preamble. This Preamble was referred to the Drafting Committee.

(1) See p. 98.

THE PRESIDENT (speaking in French). — The Committee referred it to the Drafting Committee, which is now submitting it to the Conference, and the latter is now discussing it.

I will put the Preamble to the vote.

The Preamble was adopted with all the reservations which were made regarding the word "regulations" and the other formal questions.

We will now begin to discuss the Articles.

Who [the plenipotentiaries] having communicated their full powers found in good and due form, have agreed as follows :

ARTICLE 1

The High Contracting Parties declare that they accept the Regulations on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on...

Consequently they hereby declare that they accept the obligations of the said Regulations in conformity with the terms and in accordance with the conditions set out therein.

THE PRESIDENT (speaking in French). — Are there any observations on this Article? I put it to the vote.

Article 1 was adopted.

ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding treaties.

THE PRESIDENT (speaking in French). — On behalf of the Swiss Delegation, M. Carlin made a comment upon Article 2. Does he wish to proceed with it?

M. CARLIN (Switzerland; speaking in French). — Certainly.

THE PRESIDENT (speaking in French). — Very well. M. Carlin remarked that this Article referred to the Powers which signed the Treaty of Versailles, and that the neutral Powers which did not sign it, do not appear to be referred to in this Article. If I understand aright, M. Carlin would be satisfied if Article 2 were placed in the Final Protocol and did not appear in the Convention. If this form were accepted, we should refer the Article to the jurists, who would introduce it into the Final Protocol. If, on the other hand, you think that a discussion should be opened on this subject, we will reserve M. Carlin's proposal and also Article 2, and refer the whole to the Committee which will meet to-morrow.

M. PERIETZEANO (Roumania; speaking in French). — I think that this Article should remain in the Convention, because if there are neutral Powers here who are not directly interested in the Treaty of Versailles and the other treaties of peace, they should know, as the others know, that some of the Signatory States to this Convention are exempted from the obligations laid down in it, if they are prevented by the treaties of peace from fulfilling these obligations. It is, therefore, necessary that all the Parties who are signatories to this Convention should know that it will remain a dead letter if any treaty of peace contains a provision in a contrary sense. In these circumstances it is fully understood that, when this Convention is being put into execution, the terms of the Treaties of Peace may be cited, as against those of the Convention, to the Powers who have signed the latter, and this through the very fact of their having signed it. If, therefore, one of the parties which has not signed the Treaty of Versailles asks me, who have signed it, to fulfil an obligation, and if I am prevented from doing so by the Treaty, that Power cannot reply that fact that does not concern it. When it accepts the Convention by signing it, it undertakes to exempt me from all

obligations which would cause me to contravene the Treaty of Versailles which I have signed. This explanation will be found in the *Green Book*.

THE PRESIDENT (speaking in French). — I do not think there is any discrepancy between the Roumanian Delegate's interpretation and the point of view of M. Carlin. The latter does not ask for this Article to be deleted. He asks that it shall be placed in the Final Protocol. If you so desire, we will appoint a small sub-committee to settle this point. Since this is rather a difficult question, it would be better for the jurists and competent persons—M. Carlin and M. Perietzeano—to meet and ascertain whether this Article should be left in its present position or introduced into the Final Protocol. In any case, this is a point of comparatively secondary importance.

M. SIBILLE (France). — I think we might all agree to add a few words to Article 2. In order to meet the observation made by the Swiss Delegation, it would be sufficient. I think, to draw up Article 2 as follows :

The present Convention does not in any way affect the rights and obligations arising for certain Contracting Parties... or...for of some Contracting Parties, out of the provisions of the Treaty of Peace signed at Versailles.

This is simply a suggestion.

THE PRESIDENT (speaking in French). — In my opinion it would be better—and M. Sibille will agree with me—if a small group of persons interested in this question should meet to-morrow, with M. Loudon in the chair, to find the best possible wording. This wording, drawn up under Sir Cecil Hurst, will then have been maturely considered.

M. SIBILLE (France; speaking in French). — I quite agree.

M. LOUDON (Vice-President; speaking in French). — If you wish, I propose that we meet to-morrow at 10 a.m.

M. SCASSI (Greece; speaking in French). — I venture to point out that the text of Article 2 does not appear to me liable to be misinterpreted. It states that *the present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles etc...* These rights and obligations are obviously the rights and obligations of the Signatories of the Treaty of Versailles, and there can be no ambiguity on that point.

THE PRESIDENT (speaking in French). — M. Scassi's remark appears to me quite just. The Treaty of Versailles created rights and obligations for its signatories, and if we say that the present Convention does not in any way affect these rights and obligations, it is quite understood that neutrals are in no way included in this.

M. SCASSI (Greece; speaking in French). — For this reason it seems to me that there is no occasion to refer this article for the consideration of a sub-committee.

THE PRESIDENT (speaking in French). — I think, indeed, that this article can in no way give rise to any ambiguity, but in any opinion it would be quite useful to reserve it and to refer it to the consideration of the small sub-committee under the chairmanship of M. Loudon.

M. CARLIN (Switzerland; speaking in French). — I see no objection to the examination of this article by the Sub-Committee, but I think that we might also revert to the text of Article 14 of the *Green Book*, which appears to me quite acceptable.

THE PRESIDENT (speaking in French). — M. Carlin's proposal, which would consist in adopting Article 14 of the *Green Book*, will be submitted, together with Article 2, for the consideration of the Sub-Committee. Article 2 is reserved until this has been done.

ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date, and shall be open for signature until... (October 1st, 1921).

Sir Cecil HURST (Great Britain; speaking in French). — At the request of the Officers of the Conference, Article 3 was considered by the Committee of Jurists. We had to deal with a Polish amendment (1), the exact text of which I have not before me, but the general tenour of which was to allow each signatory, at the time of signing, the right to choose one of the two languages, the text of which it would invoke in case of dispute before the Permanent Court. We have given this question close consideration, and we are of opinion that the proposal of the Polish Delegation, far from obviating the difficulties caused by the question of the two languages, would only increase them.

There is no doubt that the interpretation of a treaty drawn up in two languages will give rise to certain difficulties. It is for the Conference and the jurists to take care to avoid any discrepancy between the two texts. If, in spite of all these precautions, discrepancies still exist, it is for the Permanent Court to adjust them. It is, indeed, very difficult to allow one of the two languages to be considered as authentic for a certain number of Powers, and the other language as authentic for the other Powers. How could the Permanent Court give a verdict between the two parties? For these reasons the jurists are unanimously of opinion that the Polish amendment should not be accepted, and that the text of Article 3 should be kept in the form in which it has been submitted to you. Moreover, I repeat, the two texts have been drawn up with so much care that now we do not anticipate any appreciable differences.

M. WINIARSKI (Poland; speaking in French). — I am happy to see, from the explanations which Sir Cecil Hurst has given us, that the Committee of Jurists has not disputed the fact that the Polish proposal was in complete conformity with law. It is merely from a practical point of view that the Committee of Jurists has rejected our amendment. I venture to state precisely what it was that the Polish Delegation asked. In order to avoid any misunderstanding, we proposed that it should be laid down that, when a State declared that it chose one of the two texts, it could not, in the event of a dispute, cite the other text. In other words, if two Powers who had chosen different texts appeared before the Court of International Justice, neither could claim the right to obtain a verdict based upon one text only.

There is another point of view which calls for note. As I had the honour to state before the Committee of Jurists when they sent for me, I consider that it is most desirable to leave the Permanent Court of International Justice as much latitude as possible. Allowance must be made for the various peculiarities of international law. It would perhaps be going too far to desire to create a uniform system of jurisprudence for all the States in the world, and I am afraid such a system is only a chimera. We must therefore speak of this somewhat more prudently and circumspectly, particularly when history, in the person of M. Hanotaux, is presiding over our debates.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I should like to suggest that the date October 1st be changed to December 1st, in order to allow a full six months for the signing of this Convention. We must remember that the period of six months will include the whole summer-holiday season, when very often Parliaments do not meet, and it appears to me that October 1st is too early a date.

(1) See p. 182.

THE PRESIDENT (speaking in French). — I think that the Conference will see no objection to the substitution of December 1st for October 1st, 1921. As that will bring us almost to the vacation, it is to be hoped that this will be an additional reason for working hard and making rapid progress.

M. SCASSI (Greece; speaking in French). — I do not see the force of the words *shall bear this day's date*, since the Convention may be signed at any time up to December 1st, and the signatures will not all be added on the same day.

Sir Cecil HURST (Great Britain). — This is a form generally adopted for conventions which may be signed by the different Contracting Parties at different periods. It is essential that there shall be one date after which a convention may be considered as authoritative.

THE PRESIDENT (speaking in French). — It is, in fact, more practical when referring to the Convention.

M. SCASSI (Greece; speaking in French). — I will not press the point, and I realise that from this point of view it may be more practical.

M. LANKAS (Czecho-Slovakia; speaking in French). — It is understood that those delegates who sign the Convention have full powers from their Government.

THE PRESIDENT (speaking in French). — That is understood. In any case that will be settled at the time of signing. I will put Article 3 to the vote, calling the date December 1st.

Article 3 was adopted.

ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

THE PRESIDENT (speaking in French). — Does anyone wish to speak on Article 4?

I put it to the vote.

Article 4 was adopted.

ARTICLE 5

Members of the League of Nations, or the States represented at the Conference of Barcelona, which have not signed the present Convention before... (December 1st, 1921) may accede to it.

The same applies to States, not Members of the League, to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

THE PRESIDENT (speaking in French). — Does anyone wish to speak on Article 5?

I put it to the vote.

Article 5 was adopted.

ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the fifth ratification. Thereafter, the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers, not Members of the League, which are bound under the Treaties of Peace to accede to it.

Sir Cecil HURST (Great Britain; speaking in French). — Article 6 prescribes that the Convention must have been ratified by five Powers. This figure was only introduced by way of suggestion, but the Conference may of course accept another figure, either higher or lower. It simply means that the Convention will not come into force until a certain number of Powers have ratified it. The figure itself is of little importance. Everybody knows, for instance, that the Treaty of Peace only required three ratifications in order to be put into force.

M. BIGNAMI (Italy; speaking in French). — Are the five Powers referred to in the second paragraph to include those which in virtue of Treaties of Peace have bound themselves to adhere to the Convention?

THE PRESIDENT (speaking in French). — It means five Powers who sign here spontaneously. The Conference must take a decision as regards the number? Do you accept the number 5?

The number 5 was adopted.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — The word *Powers* appears to me bellicose. In accordance with modern ideas, we ought to use in preference the word *State*.

THE PRESIDENT (speaking in French). — There is no objection to the use of the word *State*.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — The word *Powers* occurs in both paragraphs, and the rectification would be made in both.

Sir Cecil HURST (Great Britain; speaking in French). — The word *Power* appears to me more correct.

THE PRESIDENT (speaking in French). — Sir Cecil Hurst points out to me that, according to all diplomatic traditions, the word *Power* means the Power which contracts and signs, and that to be formally correct this is the word which must be used, otherwise certain States might consider themselves as not being in a position to sign. The word *Power* covers all cases. We shall have to consider later the cases of certain parts of the British Empire.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — I repeat that to me the word *Power* has a bellicose meaning.

THE PRESIDENT (speaking in French). — One objection to the word *State* is that its meaning is too much akin to that of the word *Government*. The word *Power* has a less narrow meaning; it implies a country which is organised and which is qualified to sign. As this is the word which is habitually used, we will keep it, on the understanding that we will consider the special case of the signatures of the Dominions. Are there any further remarks regarding Article 6? I put Article 6 to the vote.

Article 6 was adopted.

ARTICLE 7

THE PRESIDENT (speaking in French). — We will now pass to Article 7, which reads as follows :

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the Parties have signed, ratified, acceded to, or denounced the present Convention. This record shall be open to the Members of the League at all times; copies of it shall be published from time to time in accordance with the directions of the Council.

M. BIGNAMI (Italy; speaking in French). — Is it necessary to place this article in a Convention such as this one? It would be sufficient to give an order to the Secretariat.

THE PRESIDENT (speaking in French). — The record would be kept even if this article did not exist, but it gives it more force.

Sir Cecil HURST (Great Britain; speaking in French). — At The Hague in 1906 a special register was opened, kept by the Netherlands Ministry for Foreign Affairs; in this register all the conventions signed at The Hague were entered. This record is extremely useful. It was our colleague, M. van Eysinga, who has unfortunately left Barcelona, who strongly urged that an Article of this kind should be inserted in the Convention. We introduced it as a result of his suggestion.

THE PRESIDENT (speaking in French). — In any case I ask that the word *copies* should be eliminated from this article. In French this means single copies, written or typed copies. It will be better to put *new editions*. I ask you to entrust this slight change to the Officers of the Conference.

I put Article 7 to the vote.

Article 7 was adopted.

ARTICLE 8

THE PRESIDENT (speaking in French). — We now pass to Article 8, which reads as follows :

Subject to the provisions of Article 379 of the Treaty of Versailles and to the corresponding provisions in the other treaties of Peace, the present Convention may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

M. CARLIN (Switzerland; speaking in French). — I must again express the hesitation which I felt with regard to Article 2. It should be borne in mind that the parties signatory to this Convention are not the parties signatory to the treaties mentioned in the article. The words *as regards the signatories of these treaties* might be added after the words *subject to the provisions of Article 379 of the Treaty of Versailles and the corresponding provisions in the other treaties of Peace*.

THE PRESIDENT (speaking in French). — That will not do.

M. CARLIN (Switzerland; speaking in French). — Would it not be better to refer this alteration to the consideration of the small sub-committee which is to meet?

THE PRESIDENT (speaking in French). — Very well. With this reservation, I put Article 8 to the vote.

Article 8 was adopted.

THE PRESIDENT (speaking in French). — The Draft Convention is adopted in the first reading.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Our Delegation has submitted an amendment to the former Article 22, which the British Delegation proposed to omit. We proposed that it should be kept. The question was whether the Article should remain open to revision. This article read as follows :

At least once in ten years the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this Convention, and shall consider the desirability of placing on the Agenda of the Conference the question of its revision or modification.

The question was submitted to the Drafting Committee, which was to invite certain Members to take part in the discussion. We have not yet been invited, and when the final scheme was distributed, we discovered that this Article has been deleted. Moreover, no one has told us the reasons for which it was deleted. I venture to ask for information on this subject, and when I have heard the reply, I reserve the right to speak again.

Sir Cecil HURST (Great Britain; speaking in French). — Article 22 of the original text, which refers to the revision of the Convention, was the subject of two amendments submitted by the French and British Delegations, which asked for this article to be omitted. The discussion which took place appears in the Records (1). The amendments were referred to the Drafting Committee. The reason adduced in favour of omission by the authors of the amendments was that the provisions vesting in the Advisory Committee the power of laying down such alterations as it appeared desirable to introduce into the Convention should be placed in the scheme of organisation rather than in the Transit Convention. It was in the hope of satisfying everyone that the Officers of the Conference proposed that this provision should be inserted in the Scheme of Organisation, of which it constituted Article 8. Under the terms of this Article the Advisory Committee was obliged to watch the working of all the conventions and to submit reports from time to time on any changes which might be introduced into them. The fact that this article in the Scheme of Organisation was adopted by the Conference rendered it needless to retain Article 22 in the Convention.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I much regret that I cannot agree with Sir Cecil Hurst. Article 8 of the Scheme of Organisation reads as follows :

In the event of any General Conventions on Communications and Transit prepared under the auspices of the League of Nations being brought into force, it shall be the duty of the Advisory and Technical Committee to report on the working of the said conventions *when it thinks fit*...—the first restriction—...noting the points, *if any*...—the second restriction, —...on which they *appear*...— the third restriction—...to require modification.

I think that the powers of the Advisory and Technical Committee are somewhat too excessive, and that Sir Cecil Hurst is right on this point. But we desire something to be left for the Conference; we desire the Members of the League of Nations to be in a position to take the initiative as regards revising and modifying the Convention. The Rapporteur will perhaps tell me that he is referring to Article 16; but he will not satisfy me even then, for this Article reads :

These regulations can be modified only by a two-thirds majority of the representatives and the Members of the League, excluding States referred to in Article 2.

Why is it made possible to modify or revise the Scheme of Organisation, but not a convention? The object of the Scheme is merely to support a convention so long

(1) See pp. 179 *et seq.*

as the latter is or may be useful, and this result cannot be obtained without modification and revision; but at present it appears that we have no other recourse but to denunciation. For this reason, while I appreciate Sir Cecil Hurst's arguments, I ask that the question be referred to a sub-committee and be given fresh consideration. If the President considers this unnecessary, I will ask for a vote on my proposal.

THE PRESIDENT (speaking in French). — As Sir Cecil Hurst pointed out, the question was examined and a vote was taken upon it in the discussion on the Scheme of Organisation. The vote is final as regards the question of revision.

I think I understood from M. Avramovitch's proposal that the Advisory Committee — which, let us not forget, is not the former Permanent Committee, but the new Advisory and Technical Committee, as established by the Conference—would be obliged to prepare a report on revision even if it did not consider it desirable. What is the meaning of the words *thinks fit*? It means *if the question is raised*. The Committee, which will have the confidence of the Conference, since it will be appointed by it, will consider the desirability of raising the question of revision. If this question is not raised, why should the Committee be obliged to prepare a report on a question which does not exist? I think, therefore, that there is no occasion to discuss this question any longer, as it has been settled.

M. WINIARSKI (Poland; speaking in French). — It seems to me that M. Avramovitch is right when he asserts that the question has not been fully dealt with, and as we consider it to be a very important one, I second the proposal to refer it to a sub-committee and not to come to a decision upon it now.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Article 8 of the Scheme of Organisation speaks only of the powers of the Advisory and Technical Committee. I am not opposed to Article 8,—I believe that the powers of the Advisory and Technical Committee should be limited, but I think that Article 8 curtails excessively the powers of the Members of the League of Nations. I am in favour of maintaining Article 8 in its present form, but I claim for the Members of the League of Nations the right to take the initiative as regards revision.

THE PRESIDENT (speaking in French). — It is understood, therefore, that there is no question of revoking the vote which has already been taken as regards the Advisory and Technical Committee. There remains M. Avramovitch's new proposal, in which he asks : *Have the Members of the League of Nations the right to demand a revision?* I thought I understood from M. Avramovitch's remarks that he wished this authority to be vested in the Conference, because the Signatory Powers bind themselves for five years, and I do not see how their right of revision could be exercised during this period. It is not possible to ask for revision during a period for which an undertaking has been given. It would be possible to discuss the question, but no more. If it is the Conference which can call for revision, I ask M. Avramovitch to explain how a Conference which has not been summoned, and which cannot sit, can intervene to call for revision.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I did not speak of the Conference. I said that according to Article 8, the initiative in the matter of asking for revision rests solely with the Advisory and Technical Committee, and I ask it *a fortiori* for the Members of the League of Nations. You say that a signed undertaking has been given for a fixed period; if we continue to renew this by tacit consent, this period may last for ten or fifteen years, and that amounts to saying that no revision will ever be possible. I ask that the Members of the League of Nations should have the opportunity of calling for revision, and I appeal to the Conference to accept my proposal.

THE PRESIDENT (speaking in French). — Perhaps you will draw up a text for this new proposal; it will be submitted to the consideration of a sub-committee,

which will prepare a report. We will discuss this report in plenary session to-morrow morning.

M. REINHARDT (Austria; speaking in French). — I think that according to the Scheme of Organisation the Members of the League may ask for a General Conference to be summoned, and such a Conference could be summoned for the special purpose of revising our Conventions. If I am not mistaken, this provision should satisfy M. Avramovitch.

THE PRESIDENT (speaking in French). — I will ask you to submit this argument to the sub-committee, on which I hope you will sit. Therefore, if there is no objection, M. Avramovitch's proposal will be referred to a sub-committee on which France, Great Britain, Italy and the other nations who asked for this Article to be omitted will be represented.

The Meeting adjourned at 8.30 p.m.

TWENTY-SECOND MEETING OF THE CONFERENCE

(Tuesday, April 12th, 1921, at 6 p.m.)

DISCUSSION OF ARTICLES 13, 14 AND 15 OF REGULATIONS — DISCUSSION OF PREAMBLE AND ARTICLES 2—9 OF CONVENTION — STATEMENT ON PRINCIPLE OF RECIPROCITY IN EXECUTION OF CONVENTIONS, AND ON EQUITABLE TREATMENT FOR COMMERCE.

The meeting opened with M. Loudon, Vice-President of the Conference, in the Chair.

M. LOUDON (Vice-President; speaking in French). — Our President, M. Gabriel Hanotaux, is obliged to absent himself, and has asked me to take the Chair at this Plenary Meeting until he can join us.

You will remember that at our meeting yesterday there arose various points which necessitated a conversation between the jurists and the delegates who were more particularly concerned. Accordingly, a meeting took place this morning, over which I presided, and I am pleased to be able to inform you that an agreement was reached upon all points. We discussed first of all the two articles included in M. Bignami's Report, which I read to you yesterday (1) when I proposed a few alterations in the wording of the Regulations on Freedom of Transit. These articles were revised by the Jurists' Committee, and the following is the text agreed upon this morning :

ARTICLE 14 OF THE REGULATIONS

In view of the fact that within or immediately adjacent to the territory of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with such territories, and that these areas or enclaves form detached portions or settlements of other parent States, and that it is impracticable for reasons of an administrative order to apply to them the provisions of this Convention, it is agreed that these provisions shall not apply to them.

The same stipulation applies where a colony or dependency has a very long frontier in comparison with its surface and where in consequence it is practically impossible to afford the necessary customs and police supervision.

The States concerned, however, will apply in the cases referred to above a régime which will respect the principles of the present Convention and facilitate transit and communications as far as practicable.

Does anyone wish to make any observations on this article?

I will put it to the vote.

Article 14 was adopted.

ARTICLE 15 OF THE REGULATIONS

THE PRESIDENT (speaking in French). — Article 15 was read to the Conference yesterday, and the Committee has not made any alteration in it; the text reads as follows :

It is understood that this Convention must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part or placed under the protection of

(1) See p.189.

the same sovereign State, whether or not these territories are individually Members of the League of Nations.

Is there any observation in regard to Article 15?

Article 15 was adopted.

THE PRESIDENT (speaking in French). — The second point with which we dealt this morning was that raised by M. Vallotton in regard to the effect which the denunciation of the Convention would have (1). During yesterday's discussion the question arose whether, should occasion arise, an article on this subject should be included in both the Transit Convention and the Convention on Navigable Waterways, and it was agreed this morning, M. Vallotton sharing the general opinion, that an article of this kind should not be included in the Transit Convention. With regard to Navigable Waterways, however, the question would appear to be one of considerable importance, and it was decided that it should be discussed by the Waterways Committee.

ARTICLE 2 OF THE CONVENTION

The third point, which was in connection with Article 2 of the Convention on Freedom of Transit, was raised yesterday by M. Carlin (2), who expressed his apprehension lest difficulties should arise for those States which were not parties to the Treaties of Peace, should they sign a Convention containing this article in its present form. M. Carlin had accordingly proposed an addition to Article 2, and this proposal found support at the meeting this morning. The Article would read as follows :

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by such Treaties.

The words *the Powers which benefit by* have reference in particular to Luxemburg. Article 3 contained a provision in a similar sense :

Subject to the provisions of Article 379 of the Treaty of Versailles and to the corresponding provisions in the other Treaties of Peace, the present Convention may be denounced...

This introduction has been replaced by the following :

Subject to the provisions of the present Convention, the latter may be denounced...

M. CARLIN (Switzerland; speaking in French). — It should be remembered that in connection with the new text for Article 2, the Roumanian Delegate felt himself called upon to make a statement, which it was understood should find a place in the Final Protocol. It was to the effect that if a Power which had signed the Convention found itself prevented by a provision of one of the Treaties of Peace from carrying out any obligation which it had assumed in virtue of the Convention, then that Power was dispensed from the obligation, in virtue of the provisions of the Treaties of Peace, in respect of any State which had not signed them. What I should like to emphasize—and to me it would appear self-evident—is that this other State has the right, in its dealings with the State which pleads one of the provisions of the Treaties of Peace in order to escape any obligation, to refuse likewise to carry out the provisions of the Convention. Without this there would not be reciprocity, and a State which had not signed the Peace Treaties would be bound, whilst another State would be at liberty to take advantage of a clause in a Treaty of Peace in order to evade its obligations.

M. PERIETZEANO (Roumania; speaking in French). — We are in complete agreement with M. Carlin.

(1) See p. 195.

(2) See p. 238.

THE PRESIDENT (speaking in French). — I am pleased to note that M. Perietzeano is in complete agreement with M. Carlin. The Final Protocol will contain a passage in the above sense (1).

M. PERIETZEANO (Roumania; speaking in French). — Then that is agreed.

THE PRESIDENT (speaking in French). — In accordance with the desire which the Conference expressed yesterday, a motion by M. Avramovitch relating to the revision of the conventions which we are engaged in drawing up was examined by the Committee over which I presided this morning, and which was attended by the members of the Jurists' Committee, amongst others.

It was proposed by M. Avramovitch to insert the following article in each of the conventions :

The question of the revision of the present Convention may be placed upon the agenda of a Conference in the conditions provided for by Article 11 of the Scheme of Organisation for General Conferences and for the Advisory and Technical Communications and Transit Committee, which shall decide by a two-thirds majority.

This proposal formed the subject of very careful study. Certain of the members present deemed the provision to be a superfluous one, taking the view that any proposal for revision was necessarily governed by the provisions which the Conference had already voted with regard to the inclusion of any question in the agenda. M. Avramovitch, on the other hand, was apprehensive lest doubt should be thrown upon this interpretation, in view of the fact that mention of the question of revision is not to be found in the provisions referred to above, whereas it is to be found elsewhere. He was therefore anxious that the right to demand the revision of the Convention should rest not upon any particular interpretation of the Scheme of Organisation, but upon a provision actually contained in the Convention. The Committee was able to give satisfaction to M. Avramovitch on this point by producing the following text for insertion in the conventions :

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

This right of demanding revision having been foreseen, should not some method have been provided for including the question in the agenda of a Conference? This is done in the text put forward by M. Avramovitch, but the Committee was of opinion that as the Barcelona Conference had already laid down regulations governing the composition of a Conference agenda, it was clear that these regulations would apply likewise to the case in dispute. The Committee further considered it inopportune to refer, in the text of the conventions themselves, to regulations which cannot be altered in the same conditions as those laid down in the Scheme of Organisation. In deference, however, to M. Avramovitch's desire not to allow any doubt to subsist with regard to the regulations applicable to the point under discussion, the Committee declared itself willing to ask that the following declaration might be included in the Final Protocol or in the Final Act :

It is understood that the Rules laid down in the Scheme of Organisation, particularly in Article 11, as to the placing of a question on the agenda of a Conference, shall also apply in the case of revision when demanded, in accordance with Article 9 of the Convention on Freedom of Transit, with Article... of the Convention on Navigable Waterways, with Article... (of the other Conventions).

M. Neujean has been good enough to draw up an additional report supplementary to that which M. Bignami read to the Conference yesterday. These two reports should be read in conjunction. It is surely unnecessary, therefore, for the Rapporteur to read a supplementary report (2).

M. Avramovitch, the Serb-Croat-Slovene Delegate, will now speak on his proposal.

(1) See p. 250.

(2) See p. 207. Annex to M. Neujean's Report.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like to tender my grateful thanks both to you, Mr. President, and to the Delegates of France and of Great Britain, who had proposed to omit this article, for having now been good enough to agree to the suggestion made by the Delegation of the Serb-Croat-Slovene State. I interpret what has been done as a friendly act calculated to remove any misunderstandings which might arise.

THE PRESIDENT (speaking in French). — I will now put to the vote the text as agreed to by M. Avramovitch, which will become Article 9 of the present Convention.

Article 9 was adopted.

The Conference decided to insert in the Final Protocol the declaration on the subject of Article 9 proposed by the Committee.

THE PRESIDENT (speaking in French). — The following is the text of the addition which it is intended to make to the Final Protocol, in accordance with the proposal made by M. Perietzeano, who thus supports M. Carlin's wishes on this point :

Whenever the Convention would appear to conflict on any point with one of the Treaties of Peace, it is agreed that the provisions of the latter will prevail, not only as between the States which signed or benefited by it, as mentioned in Article 2 of the present Convention, but also as regards other Powers.

This is the first time this text has been before us, and as it is only a provisional text, and is to form part of the Final Protocol, it would, I think, be better to defer consideration of it until we have had time to study it more at leisure. We can now proceed to vote on the provisions of the Convention.

ARTICLE 13 OF THE REGULATIONS

THE PRESIDENT (speaking in French). — The text of Article 13 must undergo another small change. This Article had been referred for consideration to the Jurists' Committee, at whose hands it has now been modified. The text reads as follows :

A défaut d'entente directe entre les États, tous différends qui surgiraient entre eux... (Any dispute which may arise... which is not settled directly between the parties themselves.)

The last six words are the ones which have been added (in the English text, the words *which may arise*).

... as to the interpretation or application of these regulations... shall be brought before the Permanent Court of International Justice, unless, in a special agreement or a general arbitration provision, etc...

Is there any objection to the addition of the words *qui surgiraient entre eux* (*which may arise*)?

Article 13 was adopted.

ARTICLE 7 OF THE CONVENTION

A change has also been made in the text of Article 7 of the Convention, which reads as follows :

A special record shall be kept by the Secretary-General showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published from time to time in accordance with the directions of the Council.

You will recollect that yesterday there occurred in this text the word *copie*, which is not very good French.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — There occurs in the French text of Article 7 an expression to which objection was made at the last meeting. I refer to the phrase *de temps à autre*. *This record shall be open to the Members of the League at all times : it shall be published from time to time in accordance with the directions of the Council.*

Would it not be better to employ some other expression than that,—for instance, the word *périodiquement*, as already suggested.

THE PRESIDENT (speaking in French). — *De temps à autre* corresponds with the English expression *from time to time*.

M. Gabriel HANOTAUX (speaking in French). — The word *périodiquement* presupposes a date. We might say : *it shall be published whenever considered desirable, or as often as possible*. It is the same thing in French as *de temps à autre*: in fact, it is even stricter. I think that would serve to express the idea.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — I should prefer even that to *from time to time*.

THE PRESIDENT (speaking in French). — If the Conference agrees, we will say : *which shall be published as often as possible in accordance with the directions of the Council*.

I will now put Article 7 to the vote.

Article 7 was adopted.

PREAMBLE

M. LANKAS (Czecho-Slovakia; speaking in French). — I took the liberty yesterday of drawing attention to a sentence in the Preamble which had been inserted by the Drafting Committee, and which was placed before us yesterday for the first time. The question is one which has not yet been discussed, either at a plenary meeting, or by the Committee, or by the Committee on Article 10. It was referred by this last to the Drafting Committee, which has to-day presented us with a text. This text ought, in my opinion, to be made the subject of most careful study. There occurs in the Preamble the following sentence : *...that it is desirable that States should mutually assist one another in order to facilitate as much as possible the putting into practice of this principle*. Whilst the principle of mutual assistance between States and between railway administrations receives my heartiest support, I am nevertheless of opinion that the expression of such a desire is out of place in the Preamble of a convention on freedom of transit. We are well aware that the putting into practice of the principle of freedom of transit is dependent upon the assistance afforded to each other by the different administrations, but I have the impression that the ceremonious introduction of this sentence into the Preamble only narrows the scope of our Convention, and is even calculated to raise differences of opinion. The question will arise as to when this mutual assistance is to be forthcoming on the part of the different administrations. The provision appears to me too loose to be useful, and I also consider that it may be dangerous placed where it is. I would therefore beg the Conference to agree to omit it, inserting it instead either in the records or in the Final Protocol if considered desirable.

Sir Cecil HURST (Great Britain). — May I, as Chairman of the Jurists' Committee, be permitted to explain the origin of this sentence occurring in the Draft Preamble now before the Conference. At the time of the discussion of the Convention in committee, two amendments to the Preamble were put in, and it was decided to refer both of them to the Drafting Committee. The first of these amendments emanated

from the Chilian (1), and the second from the Austrian, Delegation. The Jurists drew up a text calculated to give as complete satisfaction as possible to all, and the amendments were embodied in the Preamble. May I add that, from the legal point of view, principles expressed in a Preamble have no great force. They do not bind the different States; all that they do is to establish leading principles for the future guidance of the States signing the agreement. As a matter of fact, the Chilian amendment with regard to co-operation, and the Austrian amendment concerning mutual assistance between the different States, are both in perfect agreement with the spirit of the Covenant of the League of Nations.

M. REINHARDT (Austria; speaking in French). — Personally, I take the contrary view, namely, that this paragraph is in its right place. We do not want the Convention to be nothing more than a piece of paper containing a clause or two. What we desire is a really practicable Convention. I explained before a meeting of the Conference (2) the motives which led me to present this amendment. I considered it desirable that it should find a place in the Convention, and I should like to thank Sir Cecil Hurst for having been good enough to enlighten us by stating the legal view of the question. In my opinion, both the substance of the amendment and the idea underlying it, which is in its turn prompted by the ideals of the League of Nations, provide arguments in support of those which I have already had the honour to place before the Conference. In conclusion, I would beg the Conference to leave the text as it is.

M. WIELOWIEYSKI (Poland; speaking in French). — Whilst supporting the proposal put forward by the Czecho-Slovak Delegation, I should like to lay stress upon the fact that it is not the principle itself which is called in question; we all understand the necessity of mutual assistance. The question is dealt with in a Report on the subject of railways which has been drawn up by M. Politis and was circulated to-day. The subject is there treated exhaustively, in connection chiefly with the electrification of railways.

We do not in principle object to the Austrian proposal, but we do think that in its present place it contains elements of danger. You must know that anything in general conventions which is not expressed in very definite terms is liable to be interpreted in a sense different from that originally intended. Suppose we approach our neighbour with the words : We have indeed undertaken to facilitate transit for you, but only give us the waggons and we will guarantee the transit. I consider this sentence, which says nothing at all, to be dangerous, and it is for this reason that I deem it our duty to demand its omission. Without it the text will be clearer, and the meaning will be open to no doubt.

M. CARACOSTA (Roumania; speaking in French). — I am in complete agreement with the view taken by my colleagues the Delegates of Czecho-Slovakia and of Poland, and I hold with them that the sentence is out of place here. In my opinion, its inclusion in the text would only lead to difficulties.

THE PRESIDENT (speaking in French). — If there are delegates who consider the sentence out of place here, might it not be inserted in the Report?

M. REINHARDT (Austria; speaking in French). — It has been suggested that the inclusion of this sentence is dangerous. May I observe that this same mutual assistance is being rendered every day. It is only natural that a country which is in need of fuel or of rolling-stock should ask for that fuel or that rolling-stock in whatever quarter there is a chance of finding it, and this is taking place all the time. I therefore fail to understand the objection to retaining this sentence in the Preamble.

M. NEUJEAN (Belgium; Rapporteur; speaking in French). — I think that we might perfectly well subscribe to the wish expressed by the Czecho-Slovak and Polish

(1) See note on p. 92.

(2) See p. 24.

Delegates, in view of the fact that the second sentence is already implied by the first. What does the first sentence say? It reads as follows : *Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States, etc...* After all, what is this co-operation between States, if it is not that mutual help of which mention is made both in M. Politis' Report and in the Report which I myself presented? There is all the more reason to omit the last part, for it is an ill-constructed sentence, the words in the French text *ces derniers* being intended to apply to the noun *États*, which occurs several lines higher up.

THE PRESIDENT (speaking in French). — Would there be any objection to including this last part in the Report?

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — It is already in, and I seem to recollect that it also appears in M. Politis' Report.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I myself am entirely in agreement with the view which has been developed here by the Delegates of Czecho-Slovakia, Poland and Roumania. Were the sentence to which such objection is taken to remain in the Preamble, it would appear to bind the different Governments and to impose upon them obligations to which, in my opinion, they could not submit. The Austrian Delegate has said : "If you wish this Convention to be a practicable one..." We also are striving to that end, but a question arises here of relations between States, and this mutual assistance must not become a kind of previous undertaking, as it were. We wish always to be ready to co-operate in rendering all the mutual aid possible, but we do not wish to be bound in advance.

THE PRESIDENT (speaking in French). — We shall now proceed to the second reading of the articles of the Convention on Freedom of Transit, and to the taking of a vote upon them. The moment would appear to me to have arrived for requesting the President, M. Hanotaux, to be good enough once more to resume the President's hammer, that very heavy instrument with which he was kind enough to entrust me at the opening of this meeting.

M. HANOTAUX, *President of the Conference*, replaced M. Loudon, *Vice-President*, in the President's Chair.

.....

THE PRESIDENT (speaking in French). — It was natural that M. Loudon should preside over your labours until the conclusion of the first reading of the Convention. We will now proceed to the second reading, with the understanding that the Regulations and the Protocol are reserved.

CONVENTION ON FREEDOM OF TRANSIT

[Names of Powers]:

Desirous of making provision to secure and maintain freedom of communications and transit;

Being of opinion that in such matters general conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations;

Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States without prejudice to their rights of sovereignty or authority over routes available for transit;

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the final Act of such Conference;

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway adopted thereat;

Wishing to conclude a Convention for this purpose, have appointed as their Plenipotentiaries :

Who, after communicating their full powers found in good and due form, have agreed as follows :

May I say once more that the word *Regulations* and the expression *Contracting States* are expressly reserved.

M. WIELOWIEYSKI (Poland; speaking in French). — Is it understood, with reference to the last paragraph of this Preamble, that the formal portion of it is reserved?

THE PRESIDENT (speaking in French). — It is understood.

ARTICLE 1

The High Contracting Parties declare that they accept the Regulations on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on...

Consequently, they hereby declare that they accept the obligations and undertakings of the said Regulations in conformity with the terms and in accordance with the conditions set out therein.

THE PRESIDENT (speaking in French). — Does anyone wish to speak on Article 1? I will put it to the vote.

Article 1 was adopted.

ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by, such Treaties.

Article 2 was adopted.

ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until... (December 1st, 1921).

Article 3 was adopted.

ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

Article 4 was adopted.

ARTICLE 5

Members of the League of Nations which have not signed the present Convention before December 1st, 1921, may accede to it.

The same applies to States not Members of the League to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

Article 5 was adopted.

ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

Article 6 was adopted.

ARTICLE 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

Article 7 was adopted.

ARTICLE 8

Subject to the provisions of Article 2 of the present Convention, the latter may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received.

The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

THE PRESIDENT (speaking in French). — Sir Cecil Hurst, of the British Delegation, will now speak.

Sir Cecil HURST (Great Britain; speaking in French). — In order to avoid any misunderstanding, I propose to alter the sentence *Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received*, as follows : *Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date of notification*. In this way the sentence cannot give rise to any confusion.

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — As the date of notification is already to be found in the document, there would clearly be a redundancy.

THE PRESIDENT (speaking in French). — Sir Cecil Hurst fears there may be two dates,—that on which the notification is made and that on which it is received. It is certainly unfortunate not to have a uniform date.

M. RÉVEILLAUD (France; speaking in French). — It would perhaps be simpler to use the word *received* in both cases, namely, in the middle as well as at the end of the article.

THE PRESIDENT (speaking in French). — M. Loudon suggests *Copies of such notification shall be transmitted forthwith to all the other Parties*. This certainly appears to me simpler, and would not give rise to any uncertainty as to the date itself.

M. SIBILLE (France; speaking in French). — Surely we could retain the text before us by simply altering the last sentence as follows : *The denunciation shall take effect one year after the date on which it was received by the Secretary-General...*

M. NEUJEAN (Belgium, Rapporteur; speaking in French). — Exactly.

THE PRESIDENT (speaking in French). — If no objection is raised to this proposal, it is settled that it is the date of receipt which will count.

Does anyone else wish to speak on Article 8?

I put it to the vote in the modified form proposed by M. Sibille.

Article 8 was adopted.

ARTICLE 9

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

Article 9 was adopted.

THE PRESIDENT (speaking in French). — It is understood that the concluding words of the Convention *in faith whereof...* are reserved.

M. PUSTA (Esthonia; speaking in French). — As a matter of fact, this forms part of the formal articles which it was decided to reserve.

THE PRESIDENT (speaking in French). — It is understood that the vote by roll-call upon the whole text of the Convention is reserved.

DECLARATION

THE PRESIDENT (speaking in French). — M. Winiarski, the Polish Delegate, will now speak.

M. WINIARSKI (Poland; speaking in French). — I wish to address the Conference in order to read a declaration which certain delegations have asked me to make known. It relates to the Brazilian proposal on the subject of the principle of reciprocity of obligations and benefits, in connection with the carrying out of Article 23 (e) of the Covenant, including equitable treatment for commerce. As you are already aware, the Brazilian proposal has been made the subject of a report by the Sub-Committee, stating that the Brazilian Delegate's memorandum will be transmitted to the Council.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The report has been altered.

M. WINIARSKI (Poland; speaking in French). — The following is the Declaration which I have been asked to read to you :

The report of the British Delegate has just been distributed, concerning the decision taken by the Sub-Committee which, under his Chairmanship, considered the proposal put forward by the Brazilian Delegation, on the application of the Draft Conventions which the Conference is engaged in drawing up.

We agree with the point of view of the Sub-Committee, whilst expressing the earnest hope that the Council and the Assembly of the League of Nations will take the necessary measures to safeguard the application of the principle of reciprocity in the execution of the Conventions which have been drawn up by the Conference.

Further, in view of Article 23 (e) of the Covenant, we ask that the attention of the Council and of the Assembly of the League be drawn to the necessity for defining, at the earliest possible date, the principles proper to ensure an equitable treatment of commerce.

This Declaration is signed by :

MM. WIELOWIEYSKI (Poland), FREIRE D'ANDRADE (Portugal), V. SIDZIKAUSKAS (Lithuania), PLANAS SUAREZ (Venezuela), CARLIN (Switzerland), TSANG-OU (China), MIRZA HUSSEIN KHAN ALAI (Persia), VELASQUEZ (Paraguay), PERIETZEANO (Roumania), Manuel RIVAS VICUÑA (Chile), M. de PERALTA (Costa Rica), Luis Maria SOLER (Haïti), LANKAS (Czecho-Slovakia),

MORENO MERLO (Cuba), TRIFON MELEAN (Bolivia), TRESICH PAVICHICH (Serb-Croat-Slovene State), P. BIGNAMI (Italy), Guillermo BROCKMANN Y ABARZUZA (Spain), Norberto GALVEZ (Guatemala), Norberto GALVEZ (Honduras), ALBAT (Latvia), FERNANDEZ Y MEDINA (Uruguay).

The signatory delegations request the President to add this Declaration to the files of the Conference, for transmission to the Council of the League of Nations.

THE PRESIDENT (speaking in French). — This Declaration will be placed among the archives of the Conference, and the Officers of the Conference will take the measures necessary to communicate it to the Council of the League of Nations.

The meeting adjourned at 7.40 p.m.

TWENTY-FOURTH MEETING OF THE CONFERENCE

(Thursday, April 14th, 1921, at 11 a.m.)

DISCUSSION OF FORM TO BE GIVEN TO ARTICLES ON FREEDOM OF TRANSIT — ADOPTION OF ARTICLE 1 OF CONVENTION — ROLL-CALL FOR ADOPTION OF CONVENTION AND STATUTE ON FREEDOM OF TRANSIT

The Meeting opened with M. Hanotaux, President, in the Chair.

DISCUSSION OF FORM TO BE GIVEN TO ARTICLES ON FREEDOM OF TRANSIT

THE PRESIDENT (speaking in French). — We are now approaching a subject upon which we had reserved our opinion; namely, the choice between the words *Convention* and *Regulations*. Sir Cecil Hurst will give us the view of the jurists upon this point, whilst there is also, I think, a statement to be made by the British Delegation. All these matters having been cleared up, it remains for the Conference to be made conversant with the present state of affairs concerning the Protocol and the signatures to be appended to the various Acts. Sir Cecil Hurst will now speak on behalf of the Jurists' Committee.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — The text which was submitted to the Officers of the Conference, and which has been circulated amongst you, was the work of the Jurists' Committee, over which I have the honour to preside. All its members are in agreement with regard to the system proposed. This system is the one adopted at the Hague in 1907, and at Geneva in 1920. It consists in making a distinction between the formal clauses and the technical clauses. The Jurists' Committee made this proposal because experience has proved that this system has already produced good results, and also because there are precedents which, to lawyers, are always of capital importance. There does not appear to me to be any necessity to explain in detail the advantages of the system, because, in my opinion, they are clearly apparent. If, however, the members of the Conference consider that difficulties might be created if it were applied, I shall be happy to calm their apprehensions, but I can assure you that a division into a Convention and Regulations of the articles adopted by the Conference will not in any way, either from a legal or a technical point of view, prove a source of trouble to the States which accept them.

Another question was submitted to the jurists. The use of the word *Regulations* has been criticised. We have been told that we have adopted regulations for organisation and regulations for procedure, and we are now asked to adopt a third set of regulations. those on transit—This will cause confusion. The Jurists' Committee was asked by the Conference to ascertain whether, in order to avoid this confusion, it were possible to find a synonymous term. We have gone into the question carefully, and the word which we can recommend to the Conference is the word *statute*. In certain ways it is better than the word *Regulations*. If, however, the Conference is not of this opinion, the Jurists consider that there would be no objection in keeping to the word *regulations*.

May I now be permitted to speak, no longer as Chairman of the Jurists' Committee, but as a member of the British Delegation? I had occasion at a previous meeting

to give some explanations on this subject, and I pointed out that from the British point of view it is desirable to accept this division of the articles into a Convention and appended Regulations. Some difficulties of an internal character arose within the British Empire through the admission of the great Dominions into the League of Nations as separate Members. This decision was taken at Paris by distinguished statesmen, perhaps without fully reflecting on the legal and constitutional consequences of such admission, but the difficulties which it has involved for the British Empire are of an internal nature. I do not think the Conference would desire me to make a statement on the organisation of the British Empire, and I am equally convinced that it does not desire to raise difficulties for the British Empire. In a conference of this kind, when certain members are threatened with difficulties, it is natural that the others should do all in their power to remove these difficulties. As a jurist, I can give you an assurance that by accepting the division of the articles into a Convention and appended Regulations, the various States will in no way suffer prejudice from a legal point of view, and, if I point out further that the system offers great advantages for the different Powers, I hope that the Conference will be willing to accept it.

M. ORTUÑO (Spain; speaking in French). — I should like first of all to thank Sir Cecil Hurst for the explanation which he has been good enough to give us. It is the third time that I am speaking on this subject, and I will therefore endeavour to be brief. On the first occasion when I addressed you, I enquired why we talked of Regulations when up till now we had been engaged in making a Convention. I was given satisfaction on this point. On the second occasion, I indicated that the division into formal articles and technical articles received the approval of the Spanish Delegation, stating, however, that the word *Regulations* did not seem to me quite the right one to use. In Spain—and I suppose that it is so almost everywhere—*Regulations* conveys the meaning of an adjective; it is the law which is the substantive element. The administration decrees regulations in order to apply the laws. I therefore feared that, at first sight, the division into formal articles and regulations might give rise to doubt as to what these regulations exactly refer to. It was for this reason that I took the liberty of requesting Sir Cecil Hurst—who is to be congratulated upon having initiated this change—to endeavour to find a word which could be substituted, I think with advantage, for the word *Regulations*. Sir Cecil Hurst found this word. I see eye to eye with him, and I raise no objection to the word *statute*, which I consider the right one. The Spanish Delegation will vote for Sir Cecil Hurst's proposal.

THE PRESIDENT (speaking in French). — May I be allowed to give a short philological explanation. Statute is *quod stat*,—that which exists. As M. Ortuño has observed, the word is an excellent choice,—in fact, nothing short of a discovery on the part of our lawyers, not only for the present Convention, but also for any similar instrument which may be concluded in the future. I feel sure the Conference will approve, and will tender its thanks to its legal advisers for having made us this proposal.

M. SCASSI (Greece; speaking in French). — The excellent reasons adduced by Sir Cecil Hurst are all arguments in favour of making a distinction between the various contents of our Convention, whilst his proposal has also this in its favour, that it is not only rational but also practical and convenient. The legal position remains unchanged, and we need surely not hesitate to adopt a proposal carrying with it all the practical advantages which Sir Cecil Hurst has demonstrated.

But these observations do not apply to the term *Regulations*, which is rather an administrative term. Its introduction into the wording of a diplomatic instrument would constitute an innovation which could only be justified if accompanied by a definite improvement in terminology. But this is not so here. The word *Regulations* does not render the meaning of the special articles. There is no question here of regulating. We are not regulating traffic,—we are only making certain agreements in respect to traffic. I should propose adopting some term corresponding more closely to the object in view, and which would include the idea of an agreement, as we are here in order to agree. I would suggest the word *arrangement*, which has in its favour the fact that it is the one commonly used in diplomatic terminology to qualify conventions

which are not solemn engagements, but are special in the sense that these articles are special or technical.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The question which has been raised with regard to dividing the Convention into two parts, one to be called *Convention* and the other *Regulations* or *Statute*, is of considerable importance from every point of view, especially with regard to avoidance of difficulties in the future; and this is why at a previous meeting I requested the Officers of the Conference to prepare a short documentary statement giving the facts, and the documents for distribution among the members of the Conference, with the object of throwing light upon the question before the discussion and the taking of the vote. In place of this, however, the Chairman of the Legal Committee, Sir Cecil Hurst, has given us some explanations on the question. The idea of dividing the Convention into two parts—Convention and Regulations,—is an innovation for most of the States, which up till now have been in the habit of seeing all the provisions relating to obligations and duties contained in a single instrument, namely, a Convention, subject not only to ratification but also, should necessity arise, to revision and denunciation. As regards the form, I am of opinion that the division into two parts, one containing the articles relating to legal and conventional matters, and the other comprising the substance of the agreement, is a happy and most acceptable idea. But we feel some anxiety with regard to the proposal made by Sir Cecil Hurst. At the meeting on April 9th Sir Cecil Hurst addressed us on the subject of the technical articles, which I consider to be the really essential ones—those, in fact, which make the Convention. Articles on the subject of dues, tariffs, restrictions, obligations, are, in fact, those which make the actual Convention. If, however, we accept Sir Cecil Hurst's proposal, will the article beginning *The Present Convention does not in any way affect the provisions of the Treaty of Peace signed at Versailles...* appear in the Convention or in the Regulations? In the same way, as regards Article 9 : *A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties*. Further, will articles dealing with duties, obligations, notification, denunciation, etc., come under the first or under the second part? A second question : Why is there a difference in form in the first part of the Convention with regard to the expression *High Contracting Parties*, whilst in the Regulations the term used is *States*? We fail to understand the motive for this distinction. A third question : Would the word Regulations,—that is to say, the Convention,—which was to be a homogeneous whole and not to be divided into a Convention and Regulations, in reality give rise to such insurmountable difficulties that the British Empire would be unable to accept it? Sir Cecil Hurst stated that he could not give any explanation in view of the difficulty of the question.

Sir Cecil HURST (Great Britain). — Not at all.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Then I shall welcome any explanation. A fourth question : Does the acceptance of the Convention by Great Britain necessarily imply acceptance by the whole British Empire? If the Dominions, for instance, are unwilling to accept the Regulations, what will be their legal position in regard to the application of the Convention? A Dominion may, for example, come to me with a request for the right of transit, basing its demand upon the Convention. I reply : "I am sorry, but you have not signed the Regulations." The Dominion retorts : "I belong to the British Empire." Will the British Empire in such a case come to me and ask to be accorded the right of transit, taking its stand upon Article 6? I am led to ask all these questions, not with any particular interest in mind, but simply in order to be enlightened upon the subject; because when we return to our own country we may have it said to us : "You started out with a Draft Convention of which all the articles were contained in a single instrument. You have divided it into two parts; what is the relation between this new Convention and these new Regulations?" It is therefore in order to provide myself with the correct answer to the Government which I have the honour to represent that I am asking for these explanations. We shall then see whether or not we can support your point of view.

Sir Cecil HURST (Great Britain; speaking in French). — Allow me to endeavour to reply without delay to the questions put by the Serb-Croat-Slovene Delegate. The first question which he raised was that of the interpretation of Article 9 of the Convention, on the subject of revision. This article was worded by a Committee presided over by M. Loudon, and I am sure that the Committee in adopting this wording had in mind all possible revision, not only of the terms of the Regulations, but also of those of the Convention itself. The whole discussion which took place at this Committee, and all the arguments which Captain Avramovitch brought forward in support of his amendment, were based upon the necessity of revising, not only the Convention itself, but, should experience prove it to be necessary, the Regulations as well. The reason for which the article referring to revision was inserted in the Convention was that it is through the Convention that the Regulations derive their force. In my own personal opinion,—for this is not a question which has been discussed or considered by the Jurists' Committee,—Article 9 authorises a revision of the Regulations. If my interpretation be correct, and if the Conference so desire, it will be possible to clear up this point by adding to Article 9 the following words : *A request for the revision of the present Convention, and also of the Regulations, may be made.* Another means of achieving the same object would be to mention the matter in the Report. As it is, a mention of this question of revision is to be included in the Final Act, and Captain Avramovitch would perhaps be satisfied if, in the paragraph of the Final Act where mention is made of the means of carrying out such revision, it were also mentioned that it is not only the revision of the Convention but also that of the Regulations which is intended. Such is my own personal opinion upon this first point.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I wish the articles of the Convention also to be made fully applicable to the Regulations in every respect,—notification, ratification, revision. I ask the question in order that the matter should be made quite clear.

THE PRESIDENT (speaking in French). — I understand M. Avramovitch to mean that the word *obligation* only includes engagements of a practical nature, leaving out the various other kinds of undertakings which may be entered into side by side with such obligations. The Serbian Delegate wishes, therefore, to know whether these other undertakings are covered by the word *obligations*; he is apprehensive lest this word should be too restrictive. Might not M. Avramovitch's view find accurate expression in the following words : *all the obligations and undertakings*? The second paragraph of Article 1 of the Convention on Freedom of Transit would then read as follows : *Consequently they hereby declare that they accept all the obligations and undertakings...*, the word *undertaking* being added in order to supplement the word *obligations*, which might seem to imply only obligations bearing a technical character, whilst the word *undertakings* is applicable to every kind of undertaking concluded between one country and another on any subject. The text would thus be quite clear, but we could adopt a still more simple wording which Sir Cecil Hurst has just proposed to me : *Consequently they hereby declare that they accept the word "statute" in conformity with the terms and in accordance with the conditions set out in the Convention.*

The words *Statute* and *Convention* must be included in the same phrase.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Exactly.

Sir Cecil HURST (Great Britain; speaking in French). — The second point raised by Captain Avramovitch concerns the use of the word *States* in the Statute. This question is bound up with that raised by the third and fourth points brought forward by him. It concerns the peculiar situation of the Empire and the British Dominions. May I be permitted to deal with these different questions at the same time? The Dominions were admitted as Members of the League of Nations, and as Members of this League they accept certain principles and certain obligations. All the Dominions, taken individually as Members of the League of Nations, have accepted the terms of Article 23 (e) of the Covenant concerning freedom of transit and communi-

cations. The present Conference met on the invitation of the League of Nations, addressed to all its Members.

The Delegates present at this Conference are entitled to be informed of the exact situation of the Members of the League of Nations who are taking part in the discussions and in the voting at this Conference and who will adhere to the Conventions which result from it. Captain Avramovitch has asked to be informed what would be the exact situation of these Dominions if the Convention were not accepted, signed or ratified by them. I shall try to make this question quite clear by asking you to remember that this Conference includes a representative from one of the Dominions—India—and I ask him whether he agrees with what I am saying; if he does not, will he point out to the Conference wherein I have erred? India, as a Member of the League, is entitled to accept or reject the Statute which I hope will be adopted by this Conference. If this Statute is accepted by India, commerce originating from that country will be entitled to all the benefits and advantages accruing from the Statute. In return, the commerce of all the other countries will obtain the benefit of the application of the Statute to India. This will follow from the acceptance of the Statute by the Delegate for India and its ratification by our Sovereign on behalf of that Dominion.

There is another British Dominion which is a Member of the League,—Canada. She is not represented at this Conference. As a Member of the League, Canada will be free to accept or reject the Statute on Transit. As she is not represented at this Conference she will signify her accession to the Statute, if she decides to accede to it, by acceding to the Convention at some future date. In that case the commerce of the other Powers will be entitled in Canada to all the advantages arising from the Statute, and Canadian commerce will be entitled to reciprocal advantages in other countries. If any British Dominion does not accept this Statute, it will not be able to claim for its commerce the advantages derived from the Statute, and the other countries in their turn could not claim for their commerce the advantages of the Statute in the territory of the Dominion in question. This matter now appears to me sufficiently clear.

I will now return to the main question. The British Delegation is faced with certain constitutional difficulties by reason of the fact that the British Dominions—and India in particular—remain under the authority of our Sovereign, although they are separate Members of the League of Nations. I am afraid that my previous speech led Captain Avramovitch to think that this was a point which I regarded as very difficult and which I did not desire to discuss before the Conference. That is a complete mistake; far from this, I desire to be absolutely open and frank. I did not think, however, that the Conference desired to listen to long speeches on the constitution of that wonderful machine,—the British Empire. I hope that my remarks have satisfied Captain Avramovitch.

M. COLDING (Denmark; speaking in French). — In our view the Statutes are the compulsory rules for applying the Convention, in accordance with the procedure followed in the international convention on tariffs. It is for this reason that we now desire to keep the word *statute*. In Article 1 I should prefer simply the words : *the High Contracting Parties declare that they accept the Regulations of the Convention, of which it forms an inseparable part*.

THE PRESIDENT (speaking in French). — This amendment will be taken into consideration. I may tell you that we are endeavouring to establish a text to this effect.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like first of all to thank Sir Cecil Hurst for his explanations, which have thrown much light on the position to be taken up as regards the Convention and the Regulations. We should not like the Convention to be rejected and the Regulations to remain in force for ever. We should like the two parts to concord and to be inseparable, and to receive uniform treatment throughout.

THE PRESIDENT (speaking in French). — We are therefore all agreed. This is exactly what we are trying to introduce now in the text of Article I, which will be submitted to the Conference before the end of this discussion. Of course your proposal will be taken into consideration.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I thank you very much, Mr. President.

THE PRESIDENT (speaking in French). — The attention of the Conference has been drawn to the special situation of the British Dominions at the time of signing the Conventions. Sir Cecil Hurst's statements appear to be perfectly clear. There will be reciprocal treatment, and those Dominions who do not adhere to the Conventions cannot share in any of the advantages arising therefrom. Sir Cecil Hurst's text will be carefully revised in order to obviate any misunderstandings. A statement in writing to this effect will be made by Sir Hubert Llewellyn Smith on behalf of the British Delegation. This written statement will supplement the clear and precise verbal explanation which Sir Cecil Hurst has given us. I think the subject is now closed.

As regards the Transit Convention, we have now to consider whether we can accept the terms which have been proposed,—*Convention* and *Statute*. Does the Conference accept them? Are there no objections? The terms *Conventions* and *Statute* are therefore adopted.

ADOPTION OF ARTICLE 1 OF CONVENTION

We now return to the Transit Convention. The following is the text of Article 1 in its final form :

The High Contracting Parties declare that they accept the Statute on Freedom of Transit annexed hereto, adopted by the Barcelona Conference, on...

This Statute will be deemed to constitute an integral part of the present Convention. Consequently they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

This text has been proposed by the jurists and approved by the Officers of the Conference.

Does anyone object?

Article 1 was adopted.

ADOPTION BY ROLL-CALL OF CONVENTION AND STATUTE ON FREEDOM OF TRANSIT

I will now take the vote by roll-call on the Convention and Statute on Freedom of Transit as a whole.

Albania.	Yes	Denmark	Yes
Austria	Yes	Esthonia	Absent
Belgium.	Yes	Finland	Yes
Bolivia	Yes	France	Yes
Brazil.	Yes	Greece	Yes
British Empire.	Yes	Guatemala	Yes
Bulgaria	Yes	Haiti	Yes
Chile.	Yes	Honduras	Yes
China.	Yes	India	Yes
Colombia	Absent	Italy	Yes
Cuba	Yes	Japan.	Yes
Czecho-Slovakia	Yes	Latvia.	Yes

Lithuania.	Yes	Portugal.	Yes
Luxemburg	Absent	Roumania.	Yes
Netherlands	Yes	Serb-Croat-Slovene State.	Yes
Norway.	Yes	Spain	Yes
Panama.	Yes	Sweden	Yes
Paraguay	Absent	Switzerland	Yes
Persia	Yes	Uruguay	Yes
Poland	Yes	Venezuela	Absent

The Convention on Freedom of Transit as a whole was adopted, 35 voting for.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The voting being completed, I should like to take the opportunity of announcing to the Conference that I have just received full powers from the British Dominion of New Zealand to accept this Convention on its behalf.

THE PRESIDENT. — This acceptance will be entered in the minutes and will be considered as final.

The Officers of the Conference congratulate the delegates and thank them for having completed this difficult work, particularly those who, under the chairmanship of our friend M. Loudon, shared in the labours of the Plenary Committee.

The meeting adjourned at 1.20 p.m.

PART IV

TEXTS RELATING TO FREEDOM OF TRANSIT

SECTIONS I, II AND III. — Texts discussed by the Commission of Enquiry on Freedom of Communications and Transit.

SECTION IV. — Text prepared by the Commission of Enquiry and submitted to the General Conference on Communications (*Green Book*) with attached Report.

SECTIONS V AND VI. — Texts discussed at the Barcelona Conference.

SECTION VII. — Text adopted by the Conference.

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

Secretariat.

SECTION I

DRAFT CONVENTION ON FREEDOM OF TRANSIT

(Text based on notes of the deliberations of the Commission on the International Régime of Ports, Waterways and Railways of the Peace Conference and presented for information by the Secretariat.)

(October 1919.)

ARTICLE 1

The High Contracting Parties by this Convention enunciate the principle of freedom of transit in time of peace by railway, navigable waterway or canal, for persons, goods and ships or other means of transport, across territories belonging to or controlled by them, and in consequence they have agreed upon the following provisions :

ARTICLE 2

Each Contracting Party will allow, by the routes which are (for the time being) (1) most convenient for international transit, the free passage across its territory or territory placed under its control of persons, goods, vessels, railway wagons and postal services by railway, navigable waterway or canal proceeding to or from the territories of any one of the other Contracting Parties and for this purpose will allow the crossing of its territorial waters.

ARTICLE 3

Such persons, goods, vessels, railway wagons and postal services shall be exempt from any duties imposed solely in respect of transit.

Goods in transit shall be exempt from all customs or other similar duties.

ARTICLE 4

Except in so far as concerns restrictions necessary in regard to general police and national safety, each Contracting Party undertakes that such persons, goods, vessels, railway wagons and postal services shall not be unduly delayed, nor subjected to any restrictions which are not imposed equally on its own nationals or on national goods and means of transport in transit.

ARTICLE 5

All charges or payments relating to transport in transit shall be reasonable having regard to the conditions of traffic. (The rates thereof shall not be higher than the usual rates for inland traffic.) They shall be the same for persons, goods, vessels, railway wagons and postal services of all the Contracting Parties, subject to the provisions of Article 8; no charges, facilities or restrictions shall depend directly or indi-

(1) The words between parenthesis () are those with regard to which a difference of opinion arose in the Committee on the International Régime of Ports, Waterways and Railways.

rectly on the nationality or ownership of any ship or of any other means of communication on which any part of the through journey has been or is to be accomplished. (Nevertheless, subject to rights acquired under previous international Conventions with regard to railways the cost of which has been wholly or in part covered by public funds, without corresponding tolls or dues, a reasonable kilometric charge on transit may be imposed.)

ARTICLE 6

Every Contracting State which before the signature of the present Convention had granted concessions of means of communication to private companies undertakes to secure that such companies carry out the provisions of the preceding clauses.

ARTICLE 7

The present Convention in no way affects the rights and duties of belligerents and neutrals in time of war and can impose on no-one of the High Contracting Parties any obligation conflicting with its obligations as a member of the League of Nations. No Contracting Party shall be bound by the present Convention to afford transit for passengers whose admission into its territories is prohibited or for goods of classes the importation of which is prohibited either on grounds of public health or morals or with a view to the prevention of diseases of animals or plants. Each Contracting Party shall have the right to take reasonable precautions to prevent smuggling, to ensure that passengers and goods are *bona fide* in transit and to avoid danger to the safety of any waterway or other means of communication.

ARTICLE 8

Nothing in this Convention shall be construed as imposing an obligation on one of the High Contracting Parties to allow freedom of transit for persons, goods and means of transport belonging to a State which has not adhered to the present Convention and which does not grant reciprocity with regard to its own territory.

ARTICLE 9

Any question arising with regard to transit over any means of transport of international concern shall be settled in accordance with the conventions governing such means of transport. Differences concerning transit over a means of transport of international concern shall be settled in the manner fixed by the League of Nations.

SECTION II

DRAFT CONVENTION ON FREEDOM OF TRANSIT

(Presented by the Secretary-General for discussion in second reading.)

(December 30th, 1919.)

PREAMBLE

Principles of the Convention.

The High Contracting Parties, whilst safeguarding their legitimate rights of sovereignty and of administration, being desirous, in conformity with Article 23 (e) of the Covenant of the League of Nations, to secure and maintain freedom of communications and transit, by land, water and air, for persons, goods and postal services, as well as for vessels, railway wagons and other means of transport, and for telegraphic and telephonic communications, have accordingly agreed upon the following provisions for the settlement forthwith of certain of these questions.

ARTICLE 1

Definition of Freedom of Transit.

Each of the High Contracting Parties will allow, by the routes most appropriate for international transit, the free passage across its territory or territory placed under its control, of persons, goods and postal services, as well as of vessels, railway wagons or other means of transport, by railway or navigable waterway, proceeding to or from the territories of any of the other Contracting Powers and for this purpose the crossing of territorial waters shall be considered on the same footing as the crossing of territory.

ARTICLE 3

Regulation and execution of Traffic in transit by countries across which such transit takes place.

Each of the High Contracting Parties undertakes that persons, goods, postal services, vessels, railway wagons and other means of transport proceeding to or from the territories of any of the other Contracting Parties, and in course of transit by railway or navigable waterway across its territory or territory placed under its control, shall not in any circumstances be unduly delayed, it being understood rather that measures taken for the regulation and execution of traffic in transit by countries across which such transit takes place shall facilitate transport as much as possible, and shall be inspired by the principle of perfect equality between the persons, goods, postal services, vessels, railway wagons and other means of transport of any of the Contracting Powers, including the country across which the transit takes place, without any distinction being made either as to the nationality of the persons, or as to the point of starting, entry, exit, destination or ownership of goods, postal services, or other means of transport in transit.

ARTICLE 3

Duties.

Persons, goods, postal services, vessels, railway wagons or other means of transport in transit shall be exempt from any duties imposed in respect of their entry, exit or transit.

ARTICLE 4

Charges relating to services rendered.

All charges relating to traffic in transit shall be reasonable, having regard to the conditions of the traffic.

In particular, the High Contracting Parties undertake not to use transit tariffs as an instrument of international economic warfare; consequently, they undertake to apply to the transit of persons, goods, postal services, vessels, railway wagons and other means of transport of all the Contracting Parties, on the transport routes administered by the State or by concessionnaire companies, whatever the starting-point or destination, tariffs founded solely on technical conditions of transport or on considerations of commercial competition between different routes. Other conditions of working being equal, these tariffs shall be at least as advantageous as those allowed for similar traffic on the routes in the country across which transit will take place, including (excluding) its own traffic. No charges, facilities or restrictions shall depend directly or indirectly on the nationality or ownership of the vessel or any other means of transport in which any part of the through journey has been or is to be accomplished.

ARTICLE 5

Restrictions.

No High Contracting Party shall be bound by the present Convention to afford transit for passengers whose admission into its territories is prohibited, or for goods of classes the importation of which is prohibited, either on grounds of public health or security, or with a view to the prevention of diseases of animals or plants. Each Contracting Party shall have the right to take reasonable precautions to suppress smuggling, to ensure that persons, goods, postal services, vessels, railway wagons and other means of transport are *bona fide* in transit, and to avoid danger to the safety of any route or means of communication.

ARTICLE 6

Positions of the present obligations with regard to the other obligations of members of the League of Nations.

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its other obligations as a Member of the League of Nations.

ARTICLE 7

Relations between Contracting and Non-Contracting Powers.

Notwithstanding the provisions of Articles 1 and 2, the present Convention does not impose on any of the High Contracting Parties a fresh obligation, in virtue of the said Convention, to accord freedom of transit to the vessels, railway wagons or other means of transport of a State which does not adhere to the present Convention, nor to the nationals or postal services proceeding to or from such a State.

Each of the High Contracting Parties undertakes not to conclude with a State

which does not adhere to the present Convention any agreement relating to transit, by which it would receive from that State the benefit of advantages not extended to the other High Contracting Parties.

ARTICLE 8

Relations between the present Convention and the Peace Treaties.

The present Convention does not prejudice the application of Articles 378 and 379 of the Treaty of Versailles, 330 and 331 of the Treaty of Saint-Germain, etc. Consequently, Germany, Austria, etc., cannot, because certain of the stipulations provided for in Articles 378 of the Treaty of Versailles, 330 of the Treaty of Saint-Germain, etc., are also included in the present Convention, claim from any one of the others Powers which has signed not only the Treaties of Versailles, Saint-Germain, etc., but also the present Convention, the benefit of such articles, before the expiration of the period provided for in the said articles.

On the expiration of this period, the benefit accorded by any one of the said stipulations cannot be demanded from Germany, Austria, etc., by a Power which has signed both the treaties of Versailles, Saint-Germain, etc., and the present Convention, in favour of any part of its territory regarding which reciprocity is not granted to Germany, Austria, etc.

Nevertheless, if, after the expiration of the said period, Germany, Austria, etc., are at any time Members of the League of Nations, their being so shall obtain for them from the other Contracting Parties the entire benefit of the stipulations of the present Convention, on a footing of perfect equality.

ARTICLE 9

Temporary exception in favour of the devastated districts.

As a temporary exception in the present Convention, and in conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting Party which can oppose against freedom of transit across its territories, as defined and laid down in the above articles, the economic emergency arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be relieved of the obligations of the present Convention, during a period of..... beginning from.....

ARTICLE 10

Position of the present Convention with regard to particular agreements, previous and subsequent, relating to transit.

Each of the High Contracting Parties recognises in its own particular case that the present convention cancels all *inter se* obligations and agreements which are incompatible with its terms, and undertakes not to enter into similar agreements in the future, without a previous specific decision in each case by the Council of the League of Nations.

Nevertheless, the following remain in force...

ARTICLE 11

Settlement of disputes.

Subject to the stipulations of the Conventions relating to navigable waterways, and to ports of international concern, all disputes with regard to the interpretation and application of the present convention shall be settled in conformity with the provisions of the "Draft Proposals for the Permanent Organization of Communications and Transit under the League of Nations."

ARTICLE 12

Scope of application of present Convention.

The present Convention in no way affects the rights and duties of belligerents and neutrals in time of war, which will be settled by subsequent provisions, nor measures for national security, which the Powers reserve to themselves the right of taking, on their own territory, in case of national emergency, it being understood that invariably the principle of freedom of transit shall be maintained so far as possible.

ARTICLE 13, ETC.

Provisions as to protocol, revision, ratification, etc.

.....

ANNEX TO SECTION II

ANNEX TO DRAFT CONVENTION ON FREEDOM OF TRANSIT

DATED DECEMBER 30th, 1919

1. — The term "Convention" used in the text does not in any way prejudice the final legal form of the said text.

2. — The final drafting of Article 10 is reserved until the various delegations have been able to lay before the Commission the text of previous transit agreements in which they are individually interested.

The discussion of Articles 13 *et seq.* is reserved until after the discussion of the "Draft on the Permanent Organisation of Communications and Transit under the League of Nations".

3. — At the discussion on the first reading it was provided that the following remarks should be inserted in the report to accompany the text :

Re the Preamble. — That the aim of the Commission is to proclaim also the principle of freedom of transit by road, air and for telegraphic and telephonic communications, quite apart from the feasibility, for the moment, of regulating the application of these principles to any given question, or from its own competence to deal with such questions.

Re Article 1 : 1. — This has not been thought the moment to define "Transit", in view of the future uncertainty in the developments of the forms of transit. It is, however, possible now to lay down that the term Transport in transit does not necessarily involve three States—a country of origin, a country of transit and a country of destination. It is sufficient that the traffic should begin and end outside the territory of the country across which the transit takes place. Nevertheless, transit may admit of transshipment from one means of transport to another; the passage through a port, with or without transshipment from one vessel to another, with or without warehousing, is to be considered as transit across the territory of the country under whose sovereignty the port is placed.

2. — The use of the term "the most appropriate routes" is on no account to be taken as meaning that one country may demand of another the bringing into traffic of a new route which would be more favourable for transit than the routes in norma

use, but implies the routes most appropriate at the time when the traffic is actually in transit, all the conditions of traffic, such as congestion, etc., being borne in mind.

3. — The Commission has no intention of interfering in questions relating to maritime law and common usage as to the crossing of territorial waters. The words *for this purpose the crossing of territorial waters shall be considered on the same footing as the crossing of territory* apply only to the crossing of territorial waters considered as a part of the whole journey across the territory.

4. — The category *persons, goods, means of transport*, etc. is intended by the Commission to include locomotives forwarded on their own wheels, and light engines; it does not include warships; it includes the transport of munitions of war subject to the restrictions provided in Article 5 and to the stipulations contained in Article 12 as to the scope of application of the Convention.

Articles 3 and 4. — The distinction between duties on the one hand and charges on the other hand is based upon the following principle : a duty may be defined as any payment of a fiscal character, in cases where the country across which transit takes place receives payment as a contribution towards its revenue, without any direct service being rendered in return to the persons, goods, etc., in transit. A charge, on the other hand, may be defined as any payment imposed in return for a service rendered directly to persons, goods, etc., in transit. Payments intended to defray the expenses of administration of a port are counted as charges; payments for the expenses of the customs service should be included amongst duties.

Article 12. — The expressions *la sûreté de l'État* justifying, *en cas d'événements graves* des mesures de *sauvegarde nationale* are rendered in English by the words *national emergency*.

COMMISSION
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ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

Secretariat.

SECTION III

DRAFT CONVENTION ON FREEDOM OF TRANSIT

Presented by the Secretary-General for discussion in third reading.

(March 5th, 1921.)

PREAMBLE

Principles of the Convention.

The High Contracting Parties, being desirous of applying the principle of freedom of transit, in conformity with the pledge given in Article 23 (e) of the Covenant of the League of Nations, without prejudice to their rights of sovereignty or authority on the routes set apart for transit, have agreed hereby to lay down the following provisions for guaranteeing and maintaining freedom of transit by rail and waterway.

ARTICLE 1

Definition of Freedom of Transit.

Persons, goods, (mails and postal parcels), vessels, coaching and goods stock (or other means of transport) shall be deemed to be in transit across the territories placed under the sovereignty or authority of any one of the High Contracting Parties, within the meaning of the present Convention, when the passage across the said territories, with or without transshipment, warehousing, breaking bulk, or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the Contracting Party across whose territory the transit takes place.

ARTICLE 2

Regulation and Execution of Traffic in Transit.

Subject to the stipulations contained in Articles 3, 5, 6, 7, 8, 9, 12 and 13 below, each of the High Contracting Parties undertakes to facilitate the free transit, by rail and waterway, across the territories placed under its sovereignty or authority, and by the routes most convenient for international transit, of persons, goods (mails and postal parcels), vessels, coaching and goods stock (or other means of transport) of every nation, without distinction as to the nationality of travellers, or the flag flown by vessels, or as to the point of starting, entry, exit or destination, or the ownership of goods (mails or postal parcels), coaching and goods stock (or other means of transport) in transit, and to remove all obstacles unduly placed in the way of such transit; being nevertheless understood that certain routes or ports may be reserved for certain traffic in transit to the exclusion of all other, but only where this is necessitated by the existence of a combination of special economic, topographical and technical circumstances..... (1).

(1) Text concerning territorial waters reserved.

ARTICLE 3

Duties.

Persons, goods (mails and postal parcels), vessels, coaching and goods stock (or other means of transport) in transit shall be exempt from any duties imposed solely in respect of their entry, exit or transit; it being nevertheless understood that on goods in transit there may be levied duties intended to cover legitimate expenses of administration and supervision incurred on account of such transit by the Powers over whose territory it takes place; moreover the sum total of the duties levied under this head, which must not in any case exceed that of the duties charged on free imports or exports, may be reduced, or even abolished, in favour of certain places of origin or destination, to the exclusion of every other. Such abolition or reduction must not, however, envisage or result in the favouring of certain traffics to the detriment of others.

ARTICLE 4

Charges.

The High Contracting Parties undertake to apply to the transit of persons, goods (mails and postal parcels), vessels, coaching and goods stock (or other means of transport) of all the Contracting Parties on the routes administered by the State or by concessionnaire companies, irrespective of the starting-point or destination, tariffs which shall be reasonable as regards both their rates and the method of their application, traffic conditions being taken into consideration including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to favour international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the through journey has been or is to be accomplished.

ARTICLE 5

Restrictions.

None of the High Contracting Parties shall be bound by the present Convention to afford transit for passengers whose admission into its territories is prohibited, or for goods, the importation of which is prohibited, either on grounds of public health or security, or with a view to the prevention of diseases of animals or plants. Each Contracting Party shall have the right to take reasonable precautions to suppress smuggling, to ensure that persons, goods, (mails and postal parcels), vessels, coaching and goods stock (means of transport) are *bona fide* in transit, and to avoid danger to the safety of any route or means of communication.

ARTICLE 6

Relations between Contracting and non-Contracting Powers.

Notwithstanding the provisions of Article 2 *et seq.*, the present Convention does not impose on any of the High Contracting Parties, in virtue of the said Convention, a fresh obligation to grant freedom of transit to the subjects or flag of a State which does not adhere to the present Convention, nor to the persons, goods (mails and postal parcels), coaching and goods stock (or other means of transport), originating in or proceeding to a State which does not adhere to the present Convention, except when a valid reason is shown for such transit by any one of the other High Contracting Parties concerned. It is further understood that, for the purposes of this article, goods in transit under the flag of one of the Contracting Parties shall, if no transshipment takes place, benefit by the advantages granted to that flag.

ARTICLE 7

Scope of application of the Convention.

The present Convention shall not be taken as affecting in any way measures for national security which each of the High Contracting Parties reserves to itself the right of taking-on its own territory in case of national emergency; it being nevertheless understood that the principle of freedom of transit shall be maintained as far as possible.

ARTICLE 8

Application of the Convention in time of war.

The stipulations contained in the present Convention shall be valid in time of war, in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

ARTICLE 9

Position of the present obligations with regard to the other obligations of the Members of the League of Nations.

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its other obligations as a Member of the League of Nations.

ARTICLE 10

Position of the present Convention with regard to previous and subsequent particular agreements relating to transit.

Each of the High Contracting Parties recognises in its own particular case that the present Convention cancels all *inter se* obligations and agreements which are incompatible with its terms, and undertakes not to conclude similar agreements in the future, except where a combination of special economic, topographical and technical considerations might justify such agreements.

Nevertheless, the following remain in force as exceptions...

ARTICLE 11

Relations with States not adhering to the present Convention.

Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present Convention any agreement relating to transit, in conditions such that a similar agreement would be considered as contravening the terms of the preceding article, if such agreement were concluded between Contracting Parties.

ARTICLE 12

Position with regard to treaties giving greater facilities.

The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of still greater facilities granted to freedom of transit, on the territory placed under the sovereignty or authority of any one of the High Contracting Parties, conditional upon their being compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties, as defined in and applied to the present Convention, or on the other hand the prohibition of the granting of such further privileges in the future.

ARTICLE 13

Temporary exception in favour of the Devastated Regions.

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting Party which can reasonably oppose against the application of any one of the stipulations of the present Convention, on the whole or part of its territory, the economic emergency arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be deemed to be relieved temporarily from the application of the said stipulations.

ARTICLE 14

Position of the present Convention with regard to the Peace Treaties.

The present Convention does not prejudice the application of Articles 372 and 379 of the Treaty of Versailles, 330 and 331 of the Treaty of St. Germain, etc.

ARTICLE 15, etc.

Jurisdiction, ratification, denunciation, revision.

.....

SECTION IV

DRAFT CONVENTION ON FREEDOM OF TRANSIT

(Text prepared by the Commission of Enquiry and submitted to the Conference.)

(See p. 286.) The General Communications and Transit Conference of the League of Nations, assembled at.... by....

Having decided to adopt certain proposals relating to Freedom of Transit, constituting the item.... of their agenda, and

Having decided that these proposals should be drawn up in the form of a Draft International Convention,

Adopts the following Draft Convention with a view to its ratification by the Members of the League of Nations, as also by such other Powers to whom it may have been officially communicated by the Council of the League of Nations; those among the said Members and Powers who ratify the present Draft Convention being known hereafter as High Contracting Parties.

PREAMBLE

Principles of the Convention.

(See p. 286.) The High Contracting Parties, being desirous of applying the principle of Freedom of Transit, in conformity with the pledge given in Article 23 (e) of the Covenant of the League of Nations, without prejudice to their rights of sovereignty or authority on the routes set apart for transit, agree hereby to enact the following provisions for guaranteeing and maintaining Freedom of Transit by rail and waterway.

ARTICLE 1

Definition of Freedom of Transit.

(See p. 286.) Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport shall be deemed to be in transit across the territories situated under the sovereignty or authority of any one of the High Contracting Parties, when the passage across the said territories, with or without transshipment, warehousing, breaking bulk, or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the said Contracting Party across whose territory the transit takes place.

ARTICLE 2

Regulation and Execution of Traffic in Transit.

(See p. 287.) Subject to the stipulations contained elsewhere in this Convention, the measures taken by the High Contracting Parties for the regulation and execution of traffic in transit across the territories situated under their sovereignty or authority, shall facilitate the free transit of persons, goods, mails and postal parcels, vessels, coaching and

goods stock, or other means of transport, by rail and waterway, by the routes most convenient for international transit, it being understood that the crossing of territorial waters is free. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the origin, points of departure, entry, exit, or destination, or the ownership of goods, mails or postal parcels, coaching and goods stock or other means of transport in transit.

ARTICLE 3

Duties.

Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport in transit shall be exempt from any special duties in respect of their entry, exit, or transit; nevertheless, on goods in transit there may be levied duties intended solely to defray legitimate expenses of supervision and administration incurred on account of such transit by the Powers over whose territory it takes place. The sum total of the duties levied under this head, which must not, in any case, exceed that of the duties charged on free imports, may, however, be reduced, or even abolished, on certain routes. (See p. 288.)

ARTICLE 4

Charges.

The High Contracting Parties undertake to apply to the transit of persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport, on the routes administered by the State or under concession, irrespective of the points of departure or destination, tariffs which shall be reasonable as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to favour international traffic as far as possible. No charges, facilities, or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the through journey has been or is to be accomplished. (See p. 288.)

ARTICLE 5

Restrictions.

None of the High Contracting Parties shall be bound by the present Convention to afford transit for passengers whose admission into its territories is proscribed, or for goods belonging to a class of which the importation is prohibited, either on grounds of public health or security, or with a view to the prevention of diseases of animals or plants. Each Contracting Party shall have the right to take reasonable precautions to ensure that persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport are *bona fide* in transit, and to avoid danger to the safety of any route or means of communication. (See p. 290.)

ARTICLE 6

Relations between Contracting and Non-Contracting Powers.

Notwithstanding the provisions of Article 2 *et seq.*, the present Convention does not impose on any of the High Contracting Parties, in virtue of the said Convention, a fresh obligation to grant freedom of transit to the subjects or flag of a State which does not adhere to the present Convention, nor to the goods, mails and postal parcels, coaching and goods stock or other means of transport entering from, leaving by, or proceeding from or to a State which does not adhere to the present Convention, except when a valid reason is shown for such transit by any one of the other High Contracting (See p. 290.)

Parties concerned. It is further understood, for the purposes of this Article, that goods in transit under the flag of one of the Contracting Powers, shall, if no transshipment takes place, benefit by the advantages granted to that flag.

ARTICLE 7

Scope of Application of the Convention.

(See p. 291.) The present Convention shall not be taken as affecting in any way measures for national security which each of the High Contracting Parties reserves to itself the right of taking on its own territory in case of national emergency; it being nevertheless understood that the principle of Freedom of Transit shall be maintained as far as possible.

ARTICLE 8

Application of the Convention in Time of War.

(See p. 291.) The stipulations contained in the present Convention shall be valid in time of war, in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

ARTICLE 9

Relationship of the present obligations to the other obligations of the Members of the League of Nations.

(See p. 291.) The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its rights and obligations as a Member of the League of Nations.

ARTICLE 10

Relationship of the present Convention to previous and subsequent Particular Agreements relating to Transit.

(See p. 292.) Each of the High Contracting Parties recognises in its own particular case that the present Convention cancels all *inter se* obligations and agreements which are incompatible with its terms, and undertakes not to conclude any similar agreement in the future, in the absence of such a combination of special economic, topographical and technical considerations as might justify exceptional agreements of this nature.

Nevertheless, the following remain in force.....

(Conventions to remain in force although not referred to at the close of the preceding paragraph.)

ARTICLE 11

Relations with States not adhering to the present Convention.

(See p. 293.) Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present Convention any agreement relating to transit which would be contrary to the terms of the preceding article as between High Contracting Parties.

ARTICLE 12

Greater Facilities.

(See p. 293.) The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of still greater facilities granted for freedom of transit, on the territory situated under the sovereignty or authority of any one of the High Contracting Parties, under conditions compatible with the principle of equality between

the subjects, property and flags of all the High Contracting Parties, as defined in and applied to the present Convention; or on the other hand the prohibition of the granting of such further privileges in the future.

ARTICLE 13

Temporary exception in favour of the Devastated Regions.

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting Party which can establish a good case against the application of any one of the stipulations of the present Convention, on the whole or part of its territory, on the grounds of the grave economic situation arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be deemed to be relieved temporarily from the obligations entailed by the application of the said stipulations. (See p. 293.)

ARTICLE 14

Relationship of the present Convention to the Peace Treaties.

The present Convention does not prejudice the application of the Treaties of Versailles, St. Germain, Neuilly, etc., between the Powers signatory to those Treaties. (See p. 293.)

ARTICLE 15

Settlement of Disputes.

In the absence of any direct agreement between the Parties concerned, any disputes as to the interpretation and application of the present Convention shall be brought before the Permanent Communications and Transit Committee of the League of Nations, and, in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations dated..... and in the Scheme for the organisation of the General Communications and Transit Conference, and of the Permanent Communications and Transit Committee, adopted by the General Communications and Transit Conference on..... (See p. 293.)

These disputes shall in cases of urgency be accorded an accelerated procedure, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power without prejudice to the final opinion and judgment on the basic cause of dispute, of pronouncing a provisional opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

The present article does not preclude the settlement of disputes either by arbitration or by any other means, in virtue of special conventions between interested States.

ARTICLE 16

Consequences of non-execution.

Should any one of the High Contracting Parties fail to comply with the findings of the Permanent Communications and Transit Committee, or, if an appeal has been made, with the judgment of the Permanent Court of International Justice, any High Contracting Party may bring the matter before the Permanent Court of International Justice in order to obtain from it a declaration as to the measures which each of the High Contracting Parties may be entitled to take. (See p. 294.)

ARTICLE 17

Ratification.

(See p. 294.) The Secretary-General of the League of Nations shall transmit a certified copy of the present Draft Convention to each Member of the League of Nations, as well as to each Power to which the Council of the League of Nations may decide that the present Draft Convention should be officially communicated.

The Secretary-General of the League of Nations shall be notified of the ratifications of the present Convention and shall register them.

ARTICLE 18

Notification.

(See p. 294.) As soon as the ratifications of three of the Members or Powers referred to in the preceding article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or Powers referred to in the preceding article.

ARTICLE 19

Coming into force of the Convention.

(See p. 294.) The present Convention shall come into force on the thirtieth day after the date on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat, or have already contracted to adhere thereto. Thereafter, this Convention will come into force for any other Member or Power on the thirtieth day after the date on which the ratification of that Member or Power is registered with the Secretariat.

ARTICLE 20

Date of Application of the Convention.

(See p. 294.) Each Member which ratifies this Convention agrees to bring its provisions into operation not later than July 1st, 1922, and to take such action as may be necessary to make those provisions effective.

Each Power which ratifies this Convention after having received communication from the Council of the League of Nations agrees to bring its provisions into operation not later than eighteen months after the date of the said communication, and to take such action as may be necessary to make these provisions effective.

ARTICLE 21

Denunciation.

(See p. 294.) Any Member or Power which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 22

Revision.

At least once in ten years, the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the

working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 23

Official Text.

The French and English texts of this Convention shall both be authentic.

ANNEX TO SECTION IV

REPORT ON THE DRAFT CONVENTION ON FREEDOM OF TRANSIT ⁽¹⁾

*Presented to the General Communications and Transit Conference
by the Commission of Enquiry.*

The question of transit, unlike other questions which may arise in connection with international communications, is referred to explicitly in Article 23 (e) of the Covenant. Without doubt, the authors of the Covenant considered that though, in the present state of the world, no transport question is, strictly speaking, without interest to all nations, yet the question of transit stands out as one of the most specifically international problems. International imports or exports are of direct interest only to the producing and consuming countries respectively. On the other hand, goods in transit crossing national territory but originating in and destined for places outside that territory cannot be impeded or restricted at the will of the State exercising sovereignty over such territory, without resultant injury to other States, not only inadmissible in itself, but the effects of which, in the form of reprisals, are liable to extend far beyond the States originally concerned, and, by the material inconvenience inflicted and the spirit of rivalry engendered, may contribute in no small measure to disturb the peace of the world. Just as, under existing legislation in most countries, a person who has to cross his neighbour's property in order to leave his house and reach the thoroughfare enjoys a right of way over the property, in the same way every State whose external trade is absolutely or virtually forced to pass across neighbouring territory ought likewise to enjoy a guaranteed right of freedom of transit across that territory. Otherwise, it would be open to any State, merely by impeding that freedom or—what amounts to the same thing—by applying to the transit of a State conditions different from those which are accorded to the transit proceeding from or to another State, to extort from its neighbour a veritable economic tribute, and to use its geographical position as a means of diverting arbitrarily the normal flow of commercial traffic. Such a situation would be highly prejudicial to every State anxious to promote economic co-operation between States—prejudicial, too, it might be said, to every State which takes a broad and far-sighted view of its own interests. It is to the interest of States importing goods to receive them by the most convenient and economical route, quite apart from any political considerations connected with the countries traversed. Exporting States have a similar interest in the delivery of their products and the development of their commerce. Further, it is to the interest of States whose geographical situation is such that they generally serve as transit countries to encourage the development of transit traffic by granting legal guarantees for security. Lastly, and perhaps most important,

(1) This Report forms part of the preliminary documents for the General Communications and Transit Conference (*Green Book*).

land-locked States, of which new Europe contains so many, will find in such guarantees alone security against bearing the brunt, in spite of anything they can do, of quarrels between their neighbours, and against being victimised in their legitimate competition with those States whose territory they are obliged to traverse.

The object of the attached Draft Convention (See *Annex II*, p. 113) is to assure to freedom of transit this minimum of indispensable guarantee. It will be evident that the code therein laid down is not applicable to every category of transit, but only to such traffic as takes place *via* waterways and railways. The Preamble does, however, lay down the general principle of Freedom of Transit, and certain delegations had proposed to include specific reference to Freedom of Transit by road and air respectively. The Commission were of opinion, however, that the inclusion of road transport would entail special difficulties, particularly in connection with customs, while its economic importance has not, in the present stage of development of commercial motor transport, grown sufficiently to justify its immediate inclusion. With regard to the conditions of aerial transport, as the International Convention on Aerial Navigation which had already been drawn up seemed to be a more appropriate instrument to deal with the subject, there would have been a risk of overlapping had any stipulations been inserted in the Transit Convention.

The Commission confined itself to dealing in detail with Freedom of Transit in time of peace, although the obligation has been placed upon every State of maintaining such freedom in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals. The Swiss delegation had proposed that the Convention should include more definite obligations with regard to transit in time of war—in particular an undertaking only to suspend freedom of transit within the zone of operations, or to suspend such freedom on the remainder of the territory of the belligerent State only in the event of the State demanding the right of transit failing to provide its own means of transport for this purpose. Whilst choosing the present time to enunciate the general principle that Freedom of Transit should be maintained in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals, the Commission were of opinion that the question should be dealt with in a special convention to be studied at a latter date.

With this reservation, and within the limits of its application, the Convention applies rigorously the principle of the Covenant referred to in the Preamble; Freedom of Transit constitutes its motive and its goal; one of the articles defines the meaning of that freedom, whilst the others lay down the conditions necessary for its exercise.

On no account is Freedom of Transit, so conceived in the Convention, to imply any infringement of the rights of States exercising sovereignty or authority over the territories crossed, to administer transit routes in their own way, so far as is compatible with the provisions contained in the Convention. In particular, it is for the States across which transit takes place to regulate the conditions of transit, to select the routes to be employed, to fix the scale of charges for services rendered, to collect duly authorised dues and charges, to take any police or other measure which they consider not incompatible with the Convention, subject, however, in the event of a complaint, to explaining their motives and justifying their action before the prescribed jurisdiction.

The Convention on Freedom of Transit merely admits the right to use transit routes. The Commission decided to define this idea more clearly by the use of the expression *routes most appropriate to international transit*, thus laying down that the right of free transit may not be exercised except over routes in existence at the time when that transit takes place; a demand may not, in virtue of this Convention, be made for the construction or bringing into traffic of new routes or for alterations to those already existing, but only for freedom to use those which, at a given moment, and taking into account all considerations of traffic, congestion, etc., are the most suitable for international traffic. It may be observed, also, that nothing in the Convention obliges a State to give transit traffic general priority over interior traffic.

Freedom of Transit implies equality in the conditions of transit, such equality to be enjoyed within the territory of the various Contracting Parties by all the signatories to the Convention; without this equality Freedom of Transit would be but an empty phrase. Any preferential treatment accorded to one State and refused to another entails in practice a hindrance or interruption of the traffic proceeding from or

to this latter State. Equality, in the sense here intended, does not in any way exclude the inevitable differences of treatment based on purely commercial grounds, such as the establishment for the various international traffics of tariffs varying both in their rates and conditions of application, so far as such differential treatment would be considered as legitimate, on commercial grounds, in the interior of a State.

The equality which it has been the unanimous hope of the Commission to see realised is equality between all nations. Nevertheless, and in spite of the proposals of two delegations, the Swiss and the Dutch, the Commission did not consider it equitable to insert this idea in the Convention, and has confined itself, subject to certain reservations which will be explained in the course of the commentary on these articles, to stipulating in Articles 2 and 6 that equality shall only apply as between all the Contracting Parties. The Swiss and Dutch delegations did not see their way to support this view of a question which, it was recognised, was linked up with the general policy of the League of Nations. The majority of the members of the Commission considered that as every nation could be invited to adhere to the Conventions which form the subject of this Report, it was only reasonable to reserve their benefits to those who had assumed their obligation, since all were free to accept both at will.

The sole stipulation of equality is not sufficient to assure Freedom of Transit in all cases, even if, as intended, this equality comprises not only all the contracting parties, with the exception of that over whose territory transit takes place, but also the latter Power. It is possible that a State may have very little interest in favouring its own transit, if this occupies only a small place in its economic life. A State not possessing vessels of commerce, for instance, might impose on its national flag conditions of transit such as would render it practically impossible for it to cross its own territory, and this, while causing practically no inconvenience to itself, would suppress Freedom of Transit for foreign vessels, contrary to the intention of the Convention, though in accordance with the principle of equality.

Equality itself, though a condition essential to the equitable exercise of freedom, must be supplemented by other more precise guarantees as to the reasonable regulation of transit, and the economic and financial obligations to which it may be subjected. This is the object of a certain number of articles in the Convention.

The Commission fully realises that in spite of its persistent efforts through four successive discussions to elaborate the most precise text possible in the present state of public opinion throughout the world, a State can always, if it likes, find something in the interpretation of the text which will enable it, even if only temporarily, to impede Freedom of Transit. This cannot be otherwise. A Convention on Freedom of Transit, however composed, is bound to admit legitimate restrictions; derogations are necessitated by rights in connection with the general policing of a country, precautions for national defence, the necessity for protecting the health of the public or the supervision of customs, and so forth. In the same way provision must be made for temporary exceptions in favour of the regions devastated during the war, to which Article 23 (e) of the Covenant draws special attention. Lastly, there exist certain already established situations which cannot be reversed by a stroke of the pen. Naturally, these restrictions must be strictly defined and limited. But in a matter so technical it is evident that any text which attempted to give an exhaustive list of such cases would undoubtedly result either in omitting some of them, or in extending prematurely the scope of their application. How, then, in the face of these two extremes—the freedom essential for transit and the equally necessary restrictions—is the happy mean to be conserved, and all necessary guarantees assured? Had the usual form of the majority of previous conventions been maintained, there might have been no answer to the question, and it might have been wiser to abandon the drawing up of a document which would unavoidably have been only too liable to provide every sort of opportunity for wilful misapplication, and to offer the most tempting loopholes for evasion.

The organisation of the League of Nations provides stable guarantees for the carrying out of technical Conventions such as the present Convention on Freedom of Transit. In virtue of one of the articles contained in the Convention, the signatory Powers will agree to submit all disputes to compulsory arbitration, which includes submission in the first instance to an attempt at conciliation by the Permanent

Communications and Transit Committee. In this way the Committee, deriving part of its authority from the various Conventions, which in their turn owe to the Committee all their usefulness, should be enabled in every case, through possessing the confidence of all, and as a result of frank "conversations", to interpret the intention of the text and to promote good faith amongst all parties. Gradually the jurisprudence of the Committee will come to be considered as the code to be followed in questions of communications and transit. The various Conventions are but the basis and starting-point of its action; it is this action which as time goes on will in practice give expression and new life to the spirit underlying them.

It has further been possible to use in the Convention certain essential though very general expressions, such as *legitimate, reasonable, valid reason*. But for the existence of the Committee, these expressions could not be relied on invariably to convey a definite meaning, but thanks to it they can in every particular case indicate clearly the intention of the Convention with regard to their interpretation.

Lastly, before proceeding to a summary of the observations to which the articles considered in detail may give rise, the Commission wishes to affirm that although it looks upon the principle which it has unanimously adopted as the only possible one by which Freedom of Transit can be secured and maintained in conformity with the pledge embodied in Article 23 (e) of the Covenant, yet it is far from implying that identical principles should always serve as a guide in other spheres not its own, such as the equitable treatment of commerce, or other questions. The Commission has endeavoured to confine its activities to its own sphere, by proposing a set of stipulations which it considers indispensable to guarantee to the international régime of traffic in transit both juridical consistency and the stability of a recognised legal status. In the conviction, moreover, that no innovation has been made upon the generally accepted practice of the liberal Powers before the war, it lays before the Members of the League of Nations for the first time in crystallised form the codification of such practice, leaving to the peoples of the world, now being reconstituted, the choice between rejecting and perpetuating such code.

HEADING. — The Heading of the Convention put forward for adoption by a General Conference, which in its deliberative procedure will be similar to the General Labour Conference, follows closely the form of the heading of the Conventions adopted by the International Labour Organisation. After the words *with a view to its ratification by the Members of the League of Nations*, has been added, however, *as also by such other Powers to whom it may have been officially communicated by the Council of the League of Nations*, because, in accordance with the constitution of the General Conference, Powers other than Members of the League of Nations may take part in its deliberations and be invited to ratify the Conventions which are the subject of this Report, if they have not already contracted to adhere to them.

The expression *High Contracting Parties* has been maintained solely from motives of convenience in drafting, although, in common with the Labour Conventions, it cannot be considered as being exactly suitable to the form in which the Convention will be adopted by the Conference.

PREAMBLE. — The expression *authority* applies to every case (suzerainty, protectorate, mandate, etc.) where the State responsible for the carrying out of the Convention does not possess sovereignty over the territory across which the transit takes place. It has been found impossible to determine in advance, in every case, upon which of the signatory States the responsibility will devolve; any difficulties that may arise can be solved individually. The State responsible for a measure is the State which actually possesses the means either to bring about or to prevent its application. Where, for example, sovereignty and authority are apportioned between different States, as a result of *settlements*, which would imply such a division of authority, it would be for the States concerned to agree among themselves as to the application of the present Convention.

ARTICLE 1. — The definition of transit given in this article is intended to eliminate any possibility of misunderstanding as to the meaning of the word *transit*, more

particularly in States where it carries a wider significance, and where it would be liable to be construed wrongly to include all international traffic, including import and export traffic, or even traffic which is not even international but is transported within the boundaries of certain territory between various portions of such territory.

The word *frontiers* in this definition refers to political frontiers, though there are a few specifically mentioned exceptions in the other texts, such as in the case of free zones in ports. Goods in transit are debarred from any process of manufacture, packing or unpacking *en route*. A vessel calling at a port, or its cargo in a transit warehouse in a port, are considered by the present article as being in transit.

The catch of a fishing vessel operating outside the limits of territorial waters and consigned to its destination through a fishing port is not considered as being in transit through that port, but, if consigned to another country, as exported therefrom.

In the enumeration of *persons, goods, etc.*, the word *persons* does not include soldiers in uniform, and the word *vessels*, subject to special provisions contained elsewhere, does not include vessels of war, police vessels or vessels connected with the exercise of any public authority in the name of a sovereign State. The word *goods* includes, *inter alia*, new wagons, also locomotives in steam or cold, in the cases and under the conditions admitting their conveyance as goods, in conformity with the railway tariffs.

The words *goods and postal parcels* have been retained by the Commission, although the British and Italian Delegations would have preferred their omission, fearing a possible overlapping between the present Convention and the postal Conventions. In the opinion of the Commission, however, no difficulty arises from the wording of the present Convention, as compared with that of the Postal Convention, nor need the present document, which is a General Convention with regard to transit by rail and waterway, and lays down the application of the principle of Freedom of Transit for all classes of transport falling within this sphere, exclude in any way the various methods of application prescribed for any given category of transport in special Conventions, such as the Railway and Postal Conventions.

The words *other means of transport* refer in particular to rafts, tugs, with or without tow, and any means of transport by rail or waterway which may be evolved in the future.

ARTICLE 2. — Article 2 should be read in conjunction with the other articles of the Convention which admit of certain restrictions to Freedom of Transit; in particular it should be compared with Article 6, which indicates clearly the States entitled to claim its benefits.

The words *by the routes most convenient for international transit* have already been fully commented upon; they do not in any way signify that, in virtue of this Convention, a State can demand from another State the bringing into traffic of new lines of greater utility for transit, or the carrying out of alterations to routes already existing, but refer to the routes most convenient at the actual time of transit, *i.e.*, considerations of traffic, congestion, etc., being taken into account. It is implied, however, that no State has the right to prohibit passage by an existing route, except as a result of genuine and temporary obstacles. In any event, these expressions are not to be construed as in any way curtailing those rights with regard to the routeing of traffic which are already possessed by forwarding agents or railway administrations, in virtue of special international conventions.

The word *ownership* is intended to cover the personality of the owner, or his nationality, or the question whether ownership is vested in an individual or a corporation.

At the end of the first paragraph of the present article, details are given as to how, in the opinion of the Commission, discrimination should be regulated as between Contracting Parties with regard to persons, vessels, goods, mails and postal parcels, etc. This discrimination was the subject of considerable discussion. Once it had been decided not to adopt the proposal of the Swiss and Dutch Delegations to grant equality to all nations it became necessary to provide some criterion for discrimination. As regards persons, the test of nationality appeared the obvious one, and for vessels, their flag; but for goods, mails and postal parcels, etc., although it might appear possible to endow them with nationality, the practical drawbacks of this method (compulsory certificates of origin, etc.) would be so great as to exceed the actual benefits

of the Convention; the only practical tests remaining appeared to be the points of departure, of entry, of exit, or of destination. In the language of the texts, in the case of goods produced in a State X, coming from a State A, crossing States B, C and D, with a State E as their destination, so far as State C is concerned, State X is the State of commercial origin, State A is the starting-point, State B corresponds to the point of entry, State D is the State of exit, and State E is that of destination.

The second paragraph of this article simply recognises freedom of transit across territorial waters.

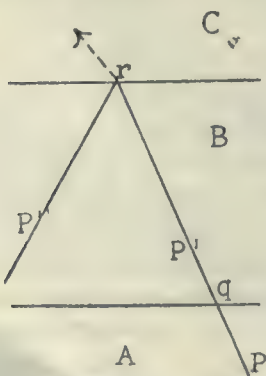
With regard to the word *flag*, the Swiss delegation had proposed to include a recognition of the right to a maritime flag, in certain conditions, of landlocked States, a right which was recognised in the Treaty of St. Germain by the signatory Powers as existing amongst themselves. Whilst decidedly favourable to the principle of this proposal, the Commission considered the treatment of a question of this nature out of place in the present Convention.

ARTICLE 3. — There is a definite distinction between Article 3 and the succeeding article. Article 3 deals with payments which are not in return for services rendered to persons, goods, etc., in transit, and which in principle are considered as inadmissible, whereas Article 4 deals with payments in return for services, and consequently described as *charges*.

Article 3 authorises duties intended to defray certain legitimate expenses of supervision and administration. Precautions are taken to ensure that the tariff of these duties shall be moderate, and shall not impede transit. It was proposed by the Belgian, British, Dutch, Greek and Japanese Delegations to limit this provision, which they considered to be a derogation, to a statistical duty, this only being admitted in order to avoid upsetting the customs systems of a considerable number of countries. The Czecho-Slovak, Italian, Polish, Roumanian and Serb-Croat-Slovene Delegations held an opposite opinion, maintaining that such duties were equivalent to charges, and that the railway administrations to which they were paid were, indirectly, benefiting transit. Finally, the Commission adopted a compromise. It was of opinion that such duties could not be assimilated to charges, as, strictly speaking, no actual service was rendered to persons, goods, etc., in transit, but that with the safeguards necessary for restricting their consequences, they might be maintained.

The very small amounts involved in these duties made it possible to admit, at the end of the article, a derogation from the principle of equality in order to facilitate the arrangement of special exemptions, more particularly between neighbouring States.

ARTICLE 4. — Article 4 deals with charges for services, such as the actual transport or handling of goods, etc., rendered to traffic in transit by public services administered by the State or under concession, and, being therefore more particularly concerned with railway tariffs, gave rise to considerable discussion. It was generally admitted that the State across whose territory transit takes place ought, from the standpoint of tariffs, and subject to differences of rates based on purely commercial considerations, to treat on a footing of perfect equality goods proceeding from or to other States. Failing this, the State across whose territory transit takes place could to all intents



and purposes, by means of practically prohibitive tariffs, abolish transit between any two States whose traffic has necessarily to proceed through its territory, or could reserve the benefit of this transit to any State at will. But, on the other hand, the Commission investigated whether the State across whose territory transit takes place ought to be bound to treat traffic in transit proceeding from or to other States on a basis of perfect equality, not only as towards each of those States, but also as towards its own traffic and the tariffs and facilities reserved for its own benefit. In particular the question arose as to whether transit traffic should be entitled to the benefits of special import and export rates for traffic passing through the same port or frontier station.

In the diagram opposite, the letter A denotes the country of departure, the letter B

the country traversed in transit, the letter C that of destination (or the sea, if the traffic leaves B at a seaport), and the letters p, p' and p'' are important points of departure for goods, centres of industry, etc. The letter q is the point of entry into the territory of B, and the letter r the point of exit from B's territory (either frontier or port). The question was whether on the journey q to r (technical considerations of working or of commercial competition between transport routes being taken into account) traffic from p—r should benefit by State B's export tariffs established in favour of traffic p'—r or p''—r. In the reverse direction, should transit traffic benefit from State B's import tariffs?

The following text gave the two alternatives :

The High Contracting Parties undertake not to use transit tariffs as an instrument of international economic warfare; consequently, they undertake to apply to the transit of persons, goods, postal services, vessels, railway wagons and other means of transport of all the Contracting Parties, on the transport routes administered by the State or by concessionnaire companies, whatever the starting-point or destination, tariffs founded solely on technical conditions of transport or on considerations of commercial competition between different routes. Other conditions of working being equal, these tariffs shall be at least as advantageous as those allowed for similar traffic on the routes in the country across which transit will take place, including (excluding) its own traffic. No charges, facilities or restrictions shall depend directly or indirectly on the nationality or ownership of the vessel or any other means of transport in which any part of the through journey has been or is to be accomplished.

It was maintained by the Chinese, Czecho-Slovak, Italian, Polish, Roumanian and Serb-Croat-Slovene Delegations that both as regards the export of its products and the import of raw material, a State should possess the right to encourage its own industry and agriculture by means of transport tariffs, without regard to the technical conditions of traffic, or to any considerations of commercial competition between traffic routes. Accordingly, these delegations were in favour of the more restrictive text.

These delegations emphasised the fact that they based their observations solely on the logical application of Article 23 (e) of the Covenant of the League of Nations, which speaks of equitable treatment for the commerce of all Members of the League and of the legitimate and often necessary measures of protection to be taken by the countries of less wide economic, industrial or agricultural resources, with a view to their being enabled, should need arise, to adopt measures for giving any justifiable assistance to national products with which similar products from other countries were in competition, should the latter countries take up an attitude prejudicial to the national production. In this connection, the system of dumping which had been practised by certain nations might be cited.

Further, the principle of commercial competition being already admitted by the convention, the proposition of these delegations was, in their opinion, no more than a strict application of that same principle.

They added that it appeared to them unfair that, should a country elect to grant to any given national product for its transport from one point to another inside its own territory, a special tariff, possibly less even than cost price, that country should be obliged to accord the same tariff to goods in transit.

If a country should decide to make sacrifices, which might be very considerable, in the interests, for example, of its own agriculture, did it not appear unreasonable to require that it should make equal sacrifices in favour of foreign agricultural products in transit across its territory?

Accordingly, if traffic in transit were granted the same tariffs as those available for traffic proceeding from any one point in a country to all other points, this should be considered as amply sufficient to promote the required conditions of equality. Other tariffs applicable only to certain goods, or available only between specified points, and founded on special considerations, ought not to be included in the question.

It was certainly the general desire that the establishment of tariffs calculated to operate to the detriment of traffic in transit should by all means be prevented; the feeling of the above-mentioned delegations was most strong on this point, but seeing that railways constitute one of the most important factors in the economic life of each country, their best utilisation could not be threatened without a protest being raised by the States concerned.

On the other hand, it was held by the British, Dutch and Portuguese delegations that, if this right to differentiate against transit traffic were accorded to a State over whose territory transit takes place, a State whose import and export traffic must necessarily traverse another State's territory becomes to all intents and purposes economically dependent upon that State,—a situation which is tantamount to the suppression of freedom of transit.

Supposing, for instance, that in order to reach its outlet to the sea the traffic of a certain State must cross the territory of three or four other States, that traffic has to pay a supplementary toll when crossing the territory of each of these States, simply because each will have been able to establish import and export tariffs which are more favourable than transit tariffs. Under these conditions the very principle of freedom of transit is at stake; a State is at a disadvantage purely owing to its geographical position; competition in the world's markets is no longer equal; international traffic routes, instead of facilitating economic co-operation, stand for rivalry, reprisals, in fine, for a universal struggle for supremacy.

The French delegation maintained that although the right of every nation to adopt whatever policy of protection or of free trade it pleased remained unchallenged, that policy ought to be carried out exclusively by means of customs tariffs or direct subsidies, and not by means of transport tariffs. The sole result of the latter practice, which must be clearly distinguished from the usual differences between import, export and transit tariffs on purely commercial grounds, would be to interfere with the natural working of transport undertakings, to vitiate indirectly customs régimes, and to disturb the application of commercial treaties.

The Belgian delegation, whilst supporting the British, Dutch and French view, considered that the whole question ought rather to be dealt with in the Railway Convention.

In face of this deadlock, the Commission decided to adopt a compromise. It was thought that as regards tariffs, it was probably useless to lay down a hard and fast rule for the application or non-application of national treatment to transit, since within every country there exist numerous measures of commercial differentiation, and tariffs are not as a rule founded on simple bases. In the opinion of the Commission, it was wiser, for the present, to be content with maintaining those general principles embodied in the text of the convention, which authorise commercial differentiation and exclude political discrimination, leaving to the competent jurisdiction the task of an interpretation which should be *reasonable*, that is to say, in conformity with the spirit of the Convention, or in other words, in conformity with the unanimous intention to prevent any unfair obstacle to transit.

ARTICLE 5. — In virtue of Article 5, none of the High Contracting Parties shall be bound to afford transit to emigrants whose admission into the country of destination is prohibited. Such emigrants could not be considered as *bona fide in transit*. Every contracting party may likewise take all necessary precautions to suppress smuggling and to prevent emigrants in transit from immigrating into its territory; any measures for this purpose, such as requiring the emigration companies to deposit a bond, the provision of special wagons, etc., are admissible.

ARTICLE 6. — Article 6 is the result of a compromise between two entirely opposite views. The Swiss and Dutch delegations proposed, as mentioned above, to treat all nations on a basis of perfect equality whether they adhered to the Convention or not. On the other hand, the Serb-Croat-Slovene delegation considered that States which did not adhere to the Convention should on no account be allowed to share in its benefits. This view, in principle, was shared by all the other delegations, because it was felt that if the benefits were the same for those States which adhered to the Convention and those which did not, a large number of States would inevitably decide not to adhere. At the same time, in the special case of transit, it did not seem possible to admit a provision by which a Contracting State might be indirectly injured through the refusal of transit by another Contracting Party to the subjects or flag of a State not adhering to the Convention, or to traffic entering from, leaving by or proceeding from or to such a State. It cannot be denied that the dislocation of traffic resulting

from such a system would in many cases become a source of grave injury to other States adhering to the Convention. For instance, should State A, which has adhered to the Convention, suspend or impede the transit of goods proceeding from a State B, which has not adhered, to a State C, which has adhered, State C may be in urgent need of these goods, and thus be indirectly injured, as a result of the measures taken by State A. A similar state of things might arise in connection with the export of goods from country C to country B, which has not adhered to the Convention. For this reason, the Commission, without prejudice to any existing rights, laid down that while the Convention itself should not in any way impose on a State adhering to it an obligation to grant free transit to the subjects or flag of a State which has failed to adhere, nor to the goods, mails and postal parcels, coaching and goods stock or other means of transport entering from, leaving by or proceeding from or to a State which does not adhere to the present Convention, yet it will always be open for a State adhering to the Convention to request the State across whose territory the transit is to take place to grant such Freedom of Transit. The British delegation considered that this request alone should suffice. At the instance of the French delegation, the Commission decided that in such a case the State demanding an exception must furnish valid reasons to the State across whose territory the transit would take place, that is to say, must substantiate the claim that serious injury would be caused to it by the stoppage of the transit in question. In spite of the proposal of the French delegation, it was not considered possible by the Commission to apply a similar principle when the conditions were reversed, that is to say, to admit the right of a State adhering to the Convention to request a State across whose territory the transit would take place deliberately to interrupt the transit of the subjects or flag of a State not adhering, and of the goods, mails and postal parcels, etc., entering from, leaving by or proceeding from or to a State not adhering, when such transit would cause serious harm to the adhering State making the demand.

Goods being classified according to the States from which they enter, by which they leave, or from or to which they proceed, and vessels being classified according to the flag, the question arose which of these régimes was applicable to the vessel and its cargo considered as a whole. For practical reasons, and in order to avoid the necessity of the cargoes being examined on board ship—which would be in effect a violation of the principle of Freedom of Transit—the text concedes that as regards the application of this article the flag covers the goods. The same practical considerations do not hold good in the case of transshipment.

ARTICLE 7. — National security, which justifies the taking of certain measures in case of national emergency, includes, in particular, dangers both from without and from within, famine and strikes affecting transport, it being understood that grave events of an exceptional character are envisaged.

It is in virtue of this article, and only under the conditions laid down therein, that the Contracting Parties reserve the right to prohibit the passage across their territory of arms and munitions liable to be a grave menace to themselves. In this Convention the Commission have no intention of clashing with the Convention of 10th September, 1919, for the Control of Trade in Arms and Ammunition.

ARTICLE 8. — The Commission did not consider it opportune to deal here with the rights and obligations of belligerents and neutrals. It is possible that these may be defined afresh in a future Convention on the limitation of the rights of war, which the Commission decided the time had not yet arrived to deal with. In that case Article 8 as now drafted would at once be revised to correspond with the new text.

ARTICLE 9. — By certain delegations this article was considered superfluous, seeing that the task of the present Convention is limited to carrying out the stipulations of one of the articles of the Covenant, and is incapable of modifying the Covenant itself. Nevertheless, the necessity was recognised for specifying clearly that should the rights and obligations of the Members of the League of Nations as such conflict with the Convention, those rights and obligations should prevail. An illustration of this principle might be found in connection with economic penalties imposed on a State by

Members of the League of Nations. According to the terms of Article 9, this State, even though it is a Contracting Party, may not benefit by the provisions of the Convention, if the economic penalties imposed entail the suspension of Freedom of Transit.

ARTICLE 10. — The present article cancels all existing obligations and agreements between High Contracting Parties, which are inconsistent with the terms of the Convention. The ratification of the Convention does not, however, of itself entail the automatic cancellation, as it were, of these obligations or agreements, but merely their abrogation in so far as they are inconsistent with the present Convention. A State adhering to the present Convention shall have the right, as regards such previous obligations and agreements, either to consider them as cancelled by the coming into force of the present Convention, or else to extend their benefit to all other High Contracting Parties, in those cases in which the incompatibility with the Convention consists of preferential treatment having been accorded by the terms of these previous engagements.

With regard to future conventions, the question is much more simple : the High Contracting Parties undertake not to conclude any agreements inconsistent with the present Convention.

Nevertheless, the Commission recognised the necessity of providing for the possibility of apparent derogations from the above principle, both in the past and in the future, when justified by a *combination of special economic, topographical and technical considerations*. The Convention as a whole is calculated to gain in elasticity by a stipulation of this kind, which will render easier its application throughout the world. In the opinion of the Commission when, for example, two neighbouring States find their mutual situation such that the benefits which they contemplate granting to each other are economically, topographically and technically such that they cannot be extended to other Contracting Parties, these benefits should nevertheless be considered as in conformity with the spirit of the Convention. Were it otherwise,—and these benefits could not be granted unless they were extended to all,—the only result of the Convention would be to debar any State from granting them, and thus to hinder instead of to promote the development of international traffic. In particular the Commission had in mind the existing Greco-Serb Convention relative to the Port of Salonika. Similar cases can be imagined where a port, or a transit route serving the port, is so constricted or lacking in technical facilities that for these or similar reasons it can only be used, wholly or in part, for transit traffic proceeding from or to a single State separated from such port by a frontier, but nevertheless dependent on it for natural access to the sea.

It is understood that the phrase *special economic, topographical and technical considerations* constitutes an indivisible whole, of which all the conditions must be present. At one time the Commission had thought it desirable that the examination of these conditions in every future case should be submitted to the Permanent Communications and Transit Committee, or to the Council of the League of Nations, but it was subsequently considered preferable not to force upon States a procedure which in cases of urgency or of vital national concern might prove delicate, but to leave the matter so that only in the event of a dispute arising would the normal jurisdiction provided for in Article 15 come into play.

In addition to these apparent derogations, which, in the opinion of the Commission, do not really contravene the intention of the Convention, it has been thought necessary in the second paragraph of the present article to provide for the possibility of maintaining in force certain existing obligations and conventions which are really inconsistent with the Convention, when their actual consequences are inconsiderable and do not disturb the general effect of the Convention. The Portuguese delegation declared its intention of drawing attention in particular to the Anglo-Portuguese Convention of June 3rd, 1891, concerning East Africa. Special reference will be made to every such Convention in the final text of Article 10, as adopted by the General Conference. To this end, Powers wishing to claim the benefit of the second paragraph of the present article are invited to draw up a list of the previous conventions of this nature which they desire to see maintained, and to submit copies to the Secretary-General of the League of Nations at least a month before the meeting of the Conference.

ARTICLE 11. — With regard to existing conventions concluded between the Contracting Parties and Powers which have not adhered to the present Convention, there is nothing in the present Convention which obliges Contracting Parties to denounce such previous conventions. On the other hand, as regards the future, Contracting Parties undertake not to conclude with non-adhering States any agreement relating to transit which would be illegal in the terms of the preceding article as between Contracting Parties.

ARTICLE 12. — The present Convention lays down the minimum rights of free transit which may be accorded. With regard to greater facilities already granted by virtue of other conventions or in any other way, or which may be granted in the future in similar conditions, and consistently with the principle of equality as defined and applied in the present Convention, that is to say, taking into account in particular the stipulations of the last sentence of Article 3 and of the end of the first paragraph of Article 10, the existence of the present Convention does not in any way preclude such arrangements being made. The Convention neither cancels nor prohibits greater facilities granted by treaty, and it neither suppresses nor guarantees juridically greater facilities granted by custom.

ARTICLE 13. — This article permits certain Contracting Parties, by reason of the grave economic situation caused by devastations perpetrated by enemy troops on their territory, to establish a case for the suspension or temporary reduction, for instance, of facilities for transit as guaranteed by the present Convention, in order to give increased facilities to the transport necessary for the reconstitution of the devastated regions. It should be noted that only the economic aspect of these devastations is dealt with in this article. It is not necessary to provide for any special exception being made on account of the technical or material damage resulting from such devastations, since, as has been stated above, the Convention can in no case be interpreted as entailing the bringing into traffic of new routes, or the carrying out of works, but merely the utilisation of existing routes so far as is practicable.

ARTICLE 14. — This article refers in particular to certain obligations which, though provided for as being reciprocal between Contracting Parties under the present Convention, would be unilateral as regards certain Powers signatory to the Treaties of Versailles, St. Germain, etc.

ARTICLE 15. — Article 15 lays down the conditions in which compulsory arbitration shall be applied to disputes arising out of the present Convention. In the preface to the commentary to these articles, the Commission has emphasised the importance of these particular provisions, and has shown that the establishment of a technical procedure for conciliating disputes, to be followed by compulsory arbitration, will place this Convention in a slightly different position from that of the majority of previous conventions by rendering it more flexible, and by entrusting the details of its execution to international organisations charged with following its operation and progressive development. The details of this procedure consist merely in an adaptation to the Convention on Freedom of Transit of the principles laid down in the text of the Permanent Organisation, and in the Resolution adopted by the Council of the League of Nations on May 19th, as applicable to similar disputes arising out of the interpretation and application of the Peace Treaties. The normal procedure is, first, an attempt at conciliation through the Permanent Communications and Transit Committee, which in most cases should suffice to settle the dispute; secondly, and failing this, the decision of the Permanent Court of International Justice, to whom appeal may be made by either party within the periods prescribed by the regulations of the Court. The last paragraph of the article, however, gives the Parties in dispute the option of any other procedure for effecting a settlement. The Secretary-General of the Commission had proposed in every case to leave the final settlement of disputes to the Permanent Court of International Justice, being of opinion that it was to the interests of all that a common jurisprudence on transit questions should be established at the earliest possible moment, through the instrumentality of the Court. The Commission, however, desirous of leaving greater liberty to the States, and in the absence of definite information regarding the Scheme of Organisation of the Permanent Court

of International Justice, thought it would be better, at least for the time being, to adopt the last paragraph of the article.

Having regard to the possibility of serious and almost irremediable damage being caused in a short time by the non-execution of the obligations of the present Convention, the necessity was realised of providing, in the second paragraph of this article, for an accelerated procedure for obtaining an injunction which would permit of the resumption of freedom of transit without prejudice to the matters in dispute.

ARTICLE 16. — The intention of this article is to prevent injury resulting from the non-execution of the Convention by one of the Contracting Parties from reacting upon a large number of third parties as a consequence of the measures of reprisal which any injured Contracting Party might consider it had a right to take. It was decided that the Permanent Court of International Justice alone should be qualified to determine what measures might be taken.

ARTICLE 17. — Articles 17 *et seq.* are, with a few verbal modifications, some of which have been explained in connection with the heading, a facsimile of the provisions of the Draft Labour Conventions drawn up, after deliberation, by a conference analogous in its procedure to the proposed Communications and Transit Conference.

In Article 17 the word *notified* has been substituted for the word *communicated*, in order that States situated at a considerable distance from the seat of the League of Nations may signify their adhesion by telegraph, to be followed by the deposit of their ratification.

The words *Draft Conventions* apply to the text as adopted by the General Conference, and before being submitted for ratification. After ratification the *Draft Convention* becomes a *Convention* for Members or Powers which ratify it. It is for this reason that the term *Draft Convention* has been adopted in connection with its communication by the Secretary-General to the Members. On the other hand, in the second paragraph the expression *the ratification of the present Convention* is used.

ARTICLE 19. — The words *or which have already contracted to adhere* have reference in particular to Articles 338 and 379 of the Treaty of Versailles, as also to the corresponding articles in the other Treaties of Peace.

ARTICLE 20. — The date mentioned,—viz., July 1st, 1922,—is, of course, only provisional and may, according to the stage which the discussions have reached, be altered by the General Conference. It was obviously necessary to fix a definite date after which Members of the League of Nations, or Powers to which the Convention had been communicated, should be considered as not having ratified it. In certain special cases the Conference, following the precedent of the Labour Conference at Washington with regard to various conventions, may enquire whether explicit reasons exist which would justify its allowing a special time-limit to a particular country for the application of the Convention.

ARTICLE 21. — Article 21 admits of the denunciation of the Convention in certain conditions. The Commission is unanimous in hoping that a day will come when provisions such as those contained in the Convention on Freedom of Transit will be considered as actual annexes to the Covenant of the League of Nations, and as such obligatory for all the Members of the League. For the present, although it is certain that the Members of the League of Nations cannot but consent to take the necessary measures to secure and maintain freedom of communications and transit—seeing that a refusal to do so would be contrary to Article 23 (e) of the Covenant—yet the tradition of Conventions, such as that on Freedom of Transit, is not yet firmly enough established for Members of the League to consider themselves obliged either to bind themselves definitely by the Convention or, as an alternative, to secede from the League of Nations. The option of denunciation provided for in Article 21 indicates clearly that the Convention, although intimately bound up with the Covenant by a common inspiration, is yet juridically independent of the Covenant, and that the States which adhere to it only do so as a voluntary effort to further the work of international co-operation.

SECTION V

DRAFT CONVENTION ON FREEDOM OF TRANSIT

Text prepared at Barcelona by the plenary Committee on Transit and referred to the drafting Committee.

The General Communications and Transit Conference of the League of Nations
Assembled at _____ by _____

Having decided to adopt certain proposals relating to Freedom of Transit, constituting the _____ item of their Agenda, and

Having decided that these proposals should be drawn up in the form of a draft international Convention,

Adopts the following draft Convention with a view to its ratification by the Members of the League of Nations, as also by such other Powers to whom it may have been officially communicated by the Council of the League of Nations; those among the said Members and Powers who ratify the present draft Convention being known hereafter as the Contracting States.

PREAMBLE.

(The Preamble was referred to the Drafting Committee together with the amendments of the Austrian, British and Chilean Delegations.)

Principles of the Convention.

The Contracting States, being desirous of applying the principle of Freedom of Transit, in conformity with the pledge given in Article 23 (e) of the Covenant of the League of Nations, without prejudice to their rights of sovereignty or authority on the routes set apart for transit, agree hereby to enact the following provisions for guaranteeing and maintaining Freedom of Transit by rail and waterway.

ARTICLE 1

Definition of Transit.

Persons, luggage, goods, vessels, coaching and goods stock or other means of transport shall be deemed to be in transit across the territories situated under the sovereignty or authority of any one of the Contracting States, when the passage across the said territories, with or without transshipment, warehousing, breaking bulk or change in the means of transport, is only a portion of the whole journey, which must have begun and shall finish outside the frontiers of the said Contracting State across whose territory the transit takes place.

ARTICLE 2

Regulation and Execution of Traffic in Transit.

Subject to the stipulations contained elsewhere in this Convention, the measures taken for the regulation and execution of traffic in transit by the Powers across whose territory the transit takes place, shall facilitate the free transit of persons, goods,

luggage, vessels, coaching and goods stock or other means of transport, by rail and waterway across the territories situated under the sovereignty or authority of the said Powers, and by the routes in use convenient for international transit. No distinction whatever shall be made as to the nationality of persons, the flag flown by vessels, the point of origin, departure, entry, exit or destination, or the ownership of goods, coaching and goods stock, or other means of transport in transit.

To ensure the application of the provisions of the present Article the Contracting States shall authorise transit through their territorial waters in conformity with the usual conditions and reservations.

ARTICLE 3

Duties.

Persons, luggage, goods, vessels, coaching and goods stock, or other means of transport in transit shall be exempt from any special duties or charges in respect of their transit, including their entry or exit; nevertheless, on this traffic in transit there may be levied duties or charges intended solely to defray expenses of supervision and administration incurred on account of such transit. The rates of any such duties or charges shall correspond as nearly as possible to the expenses which they are intended to cover, and such duties or charges must be imposed under the conditions of equality laid down in the preceding article. Such duties or charges may be reduced, or even abolished, on certain routes on the ground of differences in the cost of supervision, but in all other respects they shall be applied under the conditions of equality defined in the preceding article.

ARTICLE 4

Charges.

The Contracting States undertake to apply to the transit of persons, luggage, goods, vessels, coaching and goods stock, or other means of transport on the routes operated or administered by the State or under concession irrespective of the points of departure or destination, tariffs which shall be reasonable as regards both their rates and the method of their application, having regard to the conditions of the traffic, including considerations of commercial competition between different routes. These tariffs shall be established in such a way as to facilitate international traffic as far as possible. No charges, facilities, or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessels or other means of transport on which any part of the through journey has been or is to be accomplished.

ARTICLE 5

Restrictions.

None of the Contracting States shall be bound by the present Convention to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on the grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, luggage, goods, particularly monopolised goods, vessels, coaching and goods stock, or other means of transport are *bona fide* in transit, as well as to ensure that passengers in transit are in a position to complete their journey and to avoid danger to the safety of any route or means of communication.

Nothing in this Convention shall affect any measures which any of the Contracting States, are, or may be, required to take by virtue of any general international Conventions, to which they are parties or which may be concluded hereafter, particularly those concluded under the auspices of the League of Nations, relating to the transit, export or import of a particular class of goods such as opium or other dangerous drugs, arms or the produce of fisheries, or general Conventions concluded with a view to

preventing the infringement of the rights of industrial, literary or artistic property, false marking, false indications of origin or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

The question as to whether and in what conditions such services may be established is outside the scope of the present Convention.

ARTICLE 6

Relations between Contracting and Non-Contracting Powers.

The present Convention does not impose on any of the Contracting States, in virtue of the said Convention, a fresh obligation to grant freedom of transit to the subjects or flag of a State which does not adhere to the present Convention, nor to the goods, coaching and goods stock or other means of transport entering from, leaving by, or proceeding from or to a State which does not adhere to the present Convention, except when a valid reason is shown for such transit by any one of the other Contracting States concerned. It is further understood, for the purposes of this Article, that goods in transit under the flag of one of the Contracting States shall, if no transshipment takes place, benefit by the advantages granted to that flag.

ARTICLE 7

Scope of Application of the Convention.

Exceptions may be made in special cases to the terms of the preceding Articles in virtue of special or general measures which one of the Contracting States may be obliged to take in case of emergency affecting the vital interests of the country, it being understood that the principle of Freedom of Transit shall be observed as far as possible.

ARTICLE 8

Application of the Convention in time of War.

The present Convention does not govern the rights and obligations of belligerents and of neutrals in time of war; with this reservation, the present Convention shall be valid in time of war in the measure compatible with these rights and these obligations.

ARTICLE 9

Relationship of the present Obligations to the other Obligations of the Members of the League of Nations.

The present Convention does not impose on any of the Contracting States any obligation which would conflict with its rights and obligations as a Member of the League of Nations.

ARTICLE 10

(replacing Articles 10 and 11)

Relationship of the present Convention to previous and subsequent particular agreements relating to transit.

The Conventions, Agreements and Treaties concluded between the Contracting States, in regard to Transit, before the 1921, are not abrogated as a result of the present Convention, subject to the provisions of Article 19 of the Covenant.

In pursuance of the above provision the Contracting States undertake, either at the expiration of these Agreements or as soon as circumstances permit, to introduce into any Agreements thus maintained in force, which may conflict with the terms of the present

Convention, such amendments as may be necessary to bring these Agreements into harmony with its terms, so far as the geographical, economic, or technical conditions in the countries or regions, which are the subject of these Agreements, allow of this being done.

The Contracting States further undertake not to conclude any Conventions, Treaties, or Agreements in future which might conflict with the terms of the present Convention, unless it can be shown that there are geographical, economic or technical reasons which might, in exceptional cases, justify a departure from them.

Moreover, the Contracting States will be entitled to conclude regional ententes regarding transit, in conformity with the principles of the Convention.

ARTICLE 11

Greater Facilities.

The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of the still greater facilities granted for freedom of transit on the territory situated under the sovereignty or authority of any one of the Contracting States, under conditions compatible with the principles of the present Convention, or, on the other hand, the prohibition of the granting of such further privileges in the future.

ARTICLE 12

Temporary exception in favour of the Devastated Regions.

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any one of the stipulations of the present Convention, on the whole or part of its territory, on the grounds of the grave economic situation arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be deemed to be relieved temporarily from the obligations entailed by the application of the said stipulations to the said territory or part thereof.

ARTICLE 13

Relationship of the present Convention to the Peace Treaties.

As regards the Contracting States who are signatories of the Treaties of Peace concluded with Germany on the 28th June, 1919, with Austria on the 10th September, 1919, with Bulgaria on the 27th November, 1919, with Hungary on the 4th June, 1920, the present Convention in no way affects their rights and obligations, as established by the said Treaties.

ARTICLE 14

The present Convention shall be considered as the general Convention regarding the international régime of Transit which is provided for by Article 279 of the Treaty of Peace with Germany of the 28th June, 1919; by Article 331 of the Treaty of Peace with Austria of the 10th September, 1919; by Article 246 of the Treaty of Peace with Bulgaria of the 27th November, 1919; by Article 314 of the Treaty of Peace with Hungary of the 4th June, 1920; by Article 17 of the Treaty between the Principal Allied and Associated Powers and Poland of the 28th June, 1919; by Article 19 of the Treaty between the Principal Allied and Associated Powers and Czecho-Slovakia of the 10th September, 1919; by Article 15 of the Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State of the 10th September, 1919; and by Article 15 of the Treaty between the Principal Allied and Associated Powers and Roumania of the 9th September, 1919.

ARTICLE 15

Settlement of Disputes.

In the absence of any direct agreement between the parties concerned, any disputes as to the interpretation or application of the present Convention shall be brought before the Permanent Court of International Justice, unless, by the application of a special Convention or of a general arbitration clause, a settlement of the dispute be effected, either by arbitration or in any other manner.

The procedure shall be in the form of a request by the Government which intends to submit the dispute to the Court.

Nevertheless, in order as far as possible to settle these disputes in a friendly manner, the Contracting States undertake, before taking any legal action, and having due regard to the rights and attributions of the Council and Assembly, to submit these disputes for an advisory opinion, to the body which would be instituted by the League of Nations as the advisory and technical body for the Members of the League in matters concerning communications and transit. In urgent cases, a provisional opinion may be given recommending any temporary measures destined more particularly to restore the facilities of free transit which may have existed before the execution of the act or deed which gave rise to the dispute.

ARTICLE 16

Ratification.

The Secretary-General of the League of Nations shall transmit a certified copy of the present Draft Convention to each Member of the League of Nations, as well as to each Power to which the Council of the League of Nations may decide that the present Draft Convention should be officially communicated.

The Secretary-General of the League of Nations shall be notified of the ratifications of the present Convention and shall register them.

ARTICLE 17

Notification.

As soon as the ratifications of three of the Members or Powers referred to in the preceding article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or Powers referred to in the preceding Article.

ARTICLE 18

Coming into force of the Convention.

The present Convention shall come into force on the thirtieth day after the date on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat, or have already contracted to adhere thereto. Thereafter, this Convention will come into force for any other Member or Power on the thirtieth day after the date on which the ratification of that Member or Power is registered with the Secretariat.

ARTICLE 19

Date of Application of the Convention.

Each Member which ratifies this Convention agrees to bring its provision into operation not later than the 1st July, 1922, and to take such action as may be necessary to make those provisions effective.

Each Power which ratifies this Convention after having received communication from the Council of the League of Nations agrees to bring its provisions into operation not later than eighteen months after the date of the said communication, and to take such action as may be necessary to make these provisions effective.

ARTICLE 20

Denunciation.

Any Member or Power which has ratified this Convention may denounce it after the expiration of five years from the date on which the Convention comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 21

Revision.

At least once in ten years, the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 22

Official Text.

The French and English texts of this Convention shall both be authentic.

SECTION VI

CONVENTION ON FREEDOM OF TRANSIT AND ANNEXED REGULATIONS

Text prepared by the Drafting Committee, based on the text prepared by the Plenary Committee and submitted to the Conference.

CONVENTION ON FREEDOM OF TRANSIT

Desirous of making provision to secure and maintain freedom of communications and of transit,

Being of opinion that in such matters general Conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States without prejudice to their rights of sovereignty or authority over routes available for transit, and that it is desirable that States should mutually assist one another in order to facilitate as much as possible the putting into practice of this principle,

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the Final Act of such Conference,

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway adopted thereat,

Wishing to conclude a Convention for this purpose, have appointed as their plenipotentiaries :

.....
.....
who, after communicating their full powers found in good and due form, have agreed as follows :

ARTICLE 1

The High Contracting Parties declare that they accept the Regulations on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on.....

Consequently they hereby declare that they accept the obligations of the said Regulations in conformity with the terms and in accordance with the conditions set out therein.

ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding Treaties.

ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until..... (1st October, 1921).

ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant, the Secretary-General will register the present Convention upon the deposit of the first ratification.

ARTICLE 5

Members of the League of Nations which have not signed the present Convention before.... (October 1st, 1921)..... may accede to it.

The same applies to States not Members of the League, to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

ARTICLE 7

A special record shall be kept by the Secretary-General showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times and copies of it shall be published from time to time in accordance with the directions of the Council.

ARTICLE 8

Subject to the provisions of Article 379 of the Treaty of Versailles and the corresponding provisions in the other Treaties of Peace, the present Convention may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received.

The denunciation shall take effect one year after the date on which it was notified to the Secretary-General and shall operate only in respect of the notifying Power.

In faith whereof....

Done at..... the.....day..... in a single copy which shall remain deposited in the archives of the League of Nations.

REGULATIONS ON FREEDOM OF TRANSIT

ARTICLE 1

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.

Traffic of this nature is termed in these Regulations *traffic in transit*.

ARTICLE 2

Subject to the other provisions of these Regulations, the measures taken by States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

ARTICLE 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

ARTICLE 4

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

ARTICLE 5

No Contracting State shall be bound by these Regulations to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly,

and also vessels, coaching and goods stock and other means of transport are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in these Regulations shall affect the measures which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party or which may be concluded hereafter, particularly conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general conventions intended to prevent any infringement of the rights of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

ARTICLE 6

These Regulations do not of themselves impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their baggage or to the flag of a non-Contracting State, nor to the goods, nor to the coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-contracting State except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article goods in transit under the flag of a Contracting State shall, if no transshipment takes place, benefit by the advantages granted to that flag.

ARTICLE 7

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may in exceptional cases involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

ARTICLE 8

These Regulations do not prescribe the rights and duties of belligerents and neutrals in time of war. The regulations shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 9

These Regulations do not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

ARTICLE 10

The coming into force of these Regulations will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before..... 1921 (subject, however, to Article 19 of the Covenant).

In consideration of such agreements being kept in force, Contracting States undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of these Regulations the modifications required to bring them into harmony with such

provisions, so far as the geographical, economic or technical circumstances of the countries or areas concerned allow.

Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of these Regulations, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, Contracting States may in matters of transit enter into regional understandings consistent with the principles of these Regulations.

ARTICLE 11

These Regulations do not entail in any way the withdrawal of facilities which are greater than those provided for in the Regulations and have been granted, under conditions consistent with their principles, to traffic in transit across territory under the sovereignty or authority of a Contracting State. The Regulations also entail no prohibition of such grant of greater facilities in the future.

ARTICLE 12

In conformity with Article 23 (e) of the Covenant, any Contracting State which can establish a good case against the application of any provision of these Regulations in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision in some or all of its territory.

ARTICLE 13

Any dispute as to the interpretation or application of these Regulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members in the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

SECTION VII

CONVENTION AND STATUTE ON FREEDOM OF TRANSIT

(Text adopted by the Conference.)

Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the British Empire (with New Zealand and India), Spain, Esthonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Latvia, Lithuania, Luxemburg, Norway, Panama, Paraguay, the Netherlands, Persia, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Sweden, Switzerland, Czechoslovakia, Uruguay and Venezuela :

Desirous of making provision to secure and maintain freedom of communications and of transit,

Being of opinion that in such matters general conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognising that it is well to proclaim the right of free transit and to make regulations thereon as being one of the best means of developing co-operation between States without prejudice to their rights of sovereignty or authority over routes available for transit,

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the final Act of such Conference,

Anxious to bring into force forthwith the provisions of the Regulations relating to transit by rail or waterway adopted thereat,

Wishing to conclude a Convention for this purpose, the HIGH CONTRACTING PARTIES have appointed as their Plenipotentiaries :

The President of the Supreme Council of Albania :

The President of the Republic of Austria :

M. Henri REINHARDT, Ministerial Councillor;

His Majesty the King of the Belgians :

M. Xavier NEUJEAN, Member of the Chamber of Representatives, Minister of Railways, Marine, Posts and Telegraphs;

The President of the Republic of Bolivia :

M. Trifon MELEAN, Bolivian Consul-General in Spain;

The President of the Republic of Brazil :

His Majesty the King of Bulgaria :

M. Lubin BOCHKOFF, Civil Engineer, Assistant to the Director-General of Railways and Ports;

The President of the Republic of Chile :

The President of the Republic of China :

The President of the Republic of Colombia :

The President of the Republic of Costa Rica :

M. Manuel de PERALTA, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Costa Rica to Spain;

The President of the Republic of Cuba :

His Majesty the King of Denmark and of Iceland :

M. Peter Andreas HOLCK-COLDING, Chef de Bureau in the Ministry of Public Works;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India :

Sir Hubert LLEWELLYN SMITH, G.C.B., Economic Adviser to the Government;

and for the Dominion of New Zealand :

Sir Hubert LLEWELLYN SMITH, G.C.B.;

For India :

Sir Louis James KERSHAW, K.C.S.I., C.I.E., Secretary in the Revenue and Statistics Department in the India Office;

His Majesty the King of Spain :

Señor Don Emilio ORTUNO Y BERTE, Member of the Chamber of Deputies, formerly Minister of Public Works;

The President of the Esthonian Republic :

The President of the Republic of Finland :

The President of the French Republic :

His Majesty the King of the Hellenes :

M. Pierre SCASSI, Envoy Extraordinary and Minister Plenipotentiary of His Hellenic Majesty in Spain;

The President of the Republic of Guatemala :

Dr. Norberto GALVEZ, Guatemalan Consul-General at Barcelona;

The President of the Republic of Haiti :

The President of the Republic of Honduras :

His Majesty the King of Italy :

His Excellency M. Camillo PEANO, Minister for Public Works, Member of the Chamber of Deputies;

M. Paolo BIGNAMI, Engineer, Member of the Chamber of Deputies, formerly Under-Secretary of State;

His Majesty the Emperor of Japan :

The President of the Republic of Latvia :

M. Germain ALBAT, Under-Secretary of State for Foreign Affairs;

The President of the Lithuanian Republic :

Her Royal Highness the Grand-Duchess of Luxemburg :

M. Antoine LEFORT, Chargé d'Affaires at Berne;

His Majesty the King of Norway :

The President of the Republic of Panama

Dr. Evenor HAZERA, Consul-General for Panama in Spain, formerly Under-Secretary of State;

The President of the Republic of Paraguay :

Her Majesty the Queen of the Netherlands :

Dr. C. LELY, Formerly Minister for "Waterstaat", Commerce and Industry, Member of the Second Chamber of the States General;

Jonkheer Dr. W. J. M. van EYSINGA, Professor of International Law in the University of Leyde;

M. A. G. KROLLER, Member of the Economic Council of the Ministry of Foreign Affairs;

His Imperial Majesty the Shah of Persia :

His Excellency Mirza HUSSEIN KHAN ALAÏ, Envoy Extraordinary and Minister Plenipotentiary to Spain;

The President of the Polish Republic :

M. Joseph WIELOWIEYSKI;

The President of the Portuguese Republic;

His Majesty the King of Roumania :

His Majesty the King of the Serbs, Croats and Slovenes :

Dr. Ante TRESICH-PAVICHICH, Envoy Extraordinary and Minister Plenipotentiary to Spain and Portugal;

His Majesty the King of Sweden :

The President of the Swiss Confederation :

The President of the Czecho-Slovak Republic :

Dr. Ottokar LANKAS, Ministerial Councillor and Director of Transport in the Ministry of Railways;

The President of the Oriental Republic of Uruguay :

M. Benjamin FERNANDEZ Y MEDINA, Envoy Extraordinary and Minister Plenipotentiary to Spain;

The President of the United States of Venezuela :

Who, after communicating their full powers found in good and due form, have agreed as follows :

ARTICLE 1

The High Contracting Parties declare that they accept the Statute on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on April 14th, 1921.

This Statute will be deemed to constitute an integral part of the present Convention. Consequently they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th,

1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by, such Treaties.

ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until December 1st, 1921.

ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

ARTICLE 5

Members of the League of Nations which have not signed the present Convention before December 1st, 1921, may accede to it.

The same applies to States not Members of the League to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

ARTICLE 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

ARTICLE 8

Subject to the provisions of Article 2 of the present Convention, the latter may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received.

The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

ARTICLE 9

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done at Barcelona the twentieth day of April, one thousand nine hundred and twenty-one, in a single copy which shall remain deposited in the Archives of the League of Nations.

(Here follow the signatures of the Delegates.)

The British Delegate signed subject to the Declaration inserted in the Procès-verbal of the Meeting of April 19th, 1921, as to the British Dominions which have not been represented at the Barcelona Conference.

STATUTE ON FREEDOM OF TRANSIT

ARTICLE 1

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.

Traffic of this nature is termed in this Statute *traffic in transit*.

ARTICLE 2

Subject to the other provisions of this Statute, the measures taken by Contracting States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

ARTICLE 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be

imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

ARTICLE 4

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

ARTICLE 5

No Contracting State shall be bound by this Statute to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and good stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in this Statute shall affect the measures which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party, or which may be concluded hereafter, particularly Conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general Conventions intended to prevent any infringement of the rights of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

ARTICLE 6

This Statute does not of itself impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their baggage, or to the flag of a non-Contracting State, nor to the goods, nor to coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-Contracting State, except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article, goods in transit under the flag of a Contracting State shall, if no transshipment takes place, benefit by the advantages granted to that flag.

ARTICLE 7

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may in exceptional cases, and for as short a period as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

ARTICLE 8

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 9

This Statute does not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

ARTICLE 10

The coming into force of this Statute will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before May 1st, 1921.

In consideration of such agreements being kept in force, Contracting States undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of this Statute the modifications required to bring them into harmony with such provisions, so far as the geographical, economic or technical circumstances of the countries or areas concerned allow.

Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of this Statute, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, Contracting States may in matters of transit enter into regional understandings consistent with the principles of this Statute.

ARTICLE 11

This Statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and have been granted, under conditions consistent with its principles, to traffic in transit across territory under the sovereignty or authority of a Contracting State. The Statute also entails no prohibitions of such grant of greater facilities in the future.

ARTICLE 12

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

ARTICLE 13

Any dispute which may arise as to the interpretation or application of this Statute which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

ARTICLE 14

In view of the fact that within or immediately adjacent to the territory of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with such territories, and that these areas or enclaves form detached portions or settlements of other parent States, and that it is impracticable for reasons of an administrative order to apply to them the provisions of this Statute, it is agreed that these provisions shall not apply to them.

The same stipulation applies where a colony or dependency has a very long frontier in comparison with its surface and where in consequence it is practically impossible to afford the necessary customs and police supervision.

The States concerned, however, will apply in the cases referred to above a régime which will respect the principles of the present Statute and facilitate transit and communications as far as practicable.

ARTICLE 15

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part or placed under the protection of the same sovereign State, whether or not these territories are individually Members of the League of Nations.

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OF

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AND OF THE

RECOMMENDATIONS

RELATIVE TO

PORTS PLACED UNDER AN INTERNATIONAL REGIME

GENEVA 1921

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GENEVA 1921

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PART I

STATEMENT BY SIR FRANCIS DENT

(VICE-PRESIDENT OF THE CONFERENCE)

ON THE

QUESTION OF RAILWAYS

AND

GENERAL DISCUSSION IN CONFERENCE

FOURTEENTH MEETING OF THE CONFERENCE

(Wednesday, March 30th, 1921, at 11 a.m.)

GENERAL STATEMENT ON THE QUESTION OF RAILWAYS — GENERAL DISCUSSION

The meeting opened with M. Hanotaux, President, in the Chair.

GENERAL STATEMENT ON THE QUESTION OF RAILWAYS

The PRESIDENT (speaking in French). — The first item on our agenda is the general discussion of the Draft Convention on Railways (1).

I call on Sir Francis Dent to make a statement to the Conference on this question.

Sir Francis DENT (Vice-President). — Mr. President and Gentlemen, I appreciate very highly the honour which the Council of the League of Nations has done me in selecting me as one of the Vice-Presidents of this Conference. Of that honour I feel all unworthy. I have none of the qualifications of the distinguished statesmen who are your other Vice-Presidents. I can only suppose that I was selected because, as Chairman of the Commission for the Repartition of the Rolling-Stock of the Former Austro-Hungarian Monarchy, I have for the last eighteen months been in contact with a railway situation which is an absolute negation of the aims of the Covenant. Let me hasten to add that this railway situation arises through no fault of the railway administrations concerned. All the administrations with which I deal have, I am sure, the same high ideals as those which animate this Conference; but circumstances have hitherto been too strong for them. M. Perietzeano, of the Roumanian Delegation, has described the origin of those difficulties in his eloquent and lucid remarks at the meeting of March 14th (2). It was, therefore, with the greatest pleasure that I heard him express the decision of the Roumanian Delegation to base its actions upon the spirit of the Covenant.

The wish of the nations which have formed the League, and, I am sure, of the other nations represented here, seems clear and unmistakable. Is it not that, just as the nation which has great military strength will no longer use that strength to bend others to its will, so the nation which possesses extensive control over transport will use that power not only fairly but generously? It will not always be easy, I know, for Governments to persuade their own nationals of the justice of the policy defined in the Draft Convention. In the island which is my own mother-country the railways are private undertakings, and it has been difficult. How much greater will be the difficulty in that ever-increasing number of States which are the owners of their railway systems? In those States it might well seem to be good policy to lose money on the railways if the total wealth of the inhabitants is thereby increased. They will thus often be urged so to use their railway systems as to prejudice nationals of other countries and to obtain a competitive advantage for their own traders. All States have long seen the necessity of not allowing discrimination between individuals in respect of railway rates and charges. Now they are invited to take a further resolution; to treat other nations in the same broad spirit.

(1) The text which serves as the basis of discussion is that of Section IV of Part V of this volume : *Draft Convention on the International Regime of Railways.*

(2) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, page 19.

The war has realised the ambitions of some nations to attain freedom, of others to make their governments more democratic. To all it is important that the freedom so hardly won should not be strangled by economic disaster. Good intercommunication will go far to avert such a disaster.

I must not presume to detain the Conference. I will only say that to me it seems that this Draft Convention need not occupy the Conference for long. The principles of the Transit Convention have been approved. This Convention is but the expression of the wish of the nations to adopt a similar code for the development of international railway traffic.

For many years there has been in force in Europe a Convention, the principles of which appear to me to satisfy the aspirations of the Covenant; I allude to the Bern Convention. It is true that that Convention, owing to the laws in force in Great Britain, and also to geographical considerations, cannot be literally adhered to by the British, but they can adhere to its general intentions. There may be other States in Europe who are faced with the same difficulties. In Europe, with the Bern Convention before us, our task is made easier. In other continents there are no doubt similar Conventions which can also guide us. Those States which are parties to these existing Conventions may well ask what need there is of such a Convention as this. May I attempt to give the answer? The existing Conventions are Conventions between groups of States. By accepting this Railway Convention, all the nations join in a general Convention extending to international railway traffic those principles which have been approved in the Transit Convention. By agreeing to this Railway Convention they also make it possible for disputes arising out of international traffic to be submitted to the methods of conciliation and the jurisdiction provided by the League of Nations.

Finally, we must take into account the legitimate desire of every nation to foster its own industries. All we have to do is to be sure that in achieving this legitimate object, international traffic is not unfairly hindered.

The PRESIDENT (speaking in French). — The restrained yet masterly statement which Sir Francis Dent has made provides both the Conference and the Committee which will deal with railway questions with an excellent programme for their work. It is obvious that, although not perhaps a question of principle—since it has already formed the subject of Regulations and Conventions—the study of the regime of railways will be of the utmost importance from the point of view of the general situation of transport, and will have a very great influence on public opinion and private interests. This is perhaps the sphere in which the work of our Conference will attract the greatest amount of attention, and if we can soon announce to the whole world, as a result of our work, the creation of the Advisory and Technical Committee, with its special qualifications where railways are concerned, I think we shall indeed be able to congratulate ourselves.

Sir Francis Dent has laid down the principles with so much commonsense, clearness, and precision, that I would beg the Conference never to lose sight of them. I would venture to add that the accuracy of the information given by Sir Francis Dent, and the simple form in which it is stated, will undoubtedly enable us to hasten the work of the Conference in this particular matter.

GENERAL DISCUSSION

The general discussion will now begin.

I call upon M. Étienne, who will speak on behalf of the Central Office for International Transport.

M. ÉTIENNE (Director of the Central Office for International Transport; speaking in French). — Allow me to tender our eminent President my sincere thanks for having invited the Central Office of International Rail Transport to take part in this important Conference. In the course of the discussion on freedom of transit, allusion has been made on various occasions to the Bern Convention. Accordingly, with the President's permission, I decided to wait for the discussion to be resumed before giving a brief

account of this Convention, explaining its chief points and adding a few words on the new draft provisions to regulate the transport of certain articles under certain conditions, and also referring to the new Draft Convention on the transport of passengers and baggage. Some information is also given regarding the technical unity of railways as Article 3 of the Draft Convention deals with rolling-stock.

The study of the question of the international transport of goods by rail dates from some fifty years ago. In June, 1874, two Swiss jurists, de Seigneux at Geneva and Dr. Christ at Basle, who, being at the two entrance-gates into Switzerland, were in a good position to observe the difficulties which in those days hindered the passage of goods from one country to another, took advantage of the discussion in the Swiss Federal Chambers of a draft law regarding traffic by rail, to submit to those Chambers a petition for the convening of an International Conference, whose task it would be to regulate, in a uniform manner, certain especially important sections of legislation in regard to rail traffic. This petition, which was accompanied by a detailed memorandum, had a most favourable reception; it was transmitted to the Swiss Federal Council, which sent it to the Governments of four neighbouring countries. The latter requested Switzerland to draw up the preliminary draft of a convention to regulate international rail transport. This draft was examined in 1876 by a committee of experts, which modified it in many respects; it was then communicated in the same year not only to Germany, Austria-Hungary, France and Italy, but also to Belgium, Luxemburg, the Netherlands and Russia. All these States agreed to take part in the proposed conference, though Denmark, Spain and Portugal, who were also invited, declined to participate.

The draft of the proposed convention was restricted to practical objects,—to the real requirements of international traffic in *goods*, with through way-bills only. In all cases where uniform arrangements could not be arrived at, the draft left the matter to be dealt with by the legislation of the country concerned; it included 38 articles, divided into six chapters, followed by a final clause. Germany also prepared a draft, which consisted chiefly of amendments to the Swiss draft. In principle, the object was to draw up, in the first instance, permanent provisions which should be submitted for ratification; and, in the second place, arrangements of a more or less temporary character, which would only require the approval of the executive authority; in this way account might be taken of the stages of progress achieved in the operation of railways as well as in science and industry.

The first Conference, which took place at Bern in 1878, was entrusted with the difficult task of laying down the bases of the Convention. At this Conference there were represented Germany, Austria-Hungary, Belgium, France, Russia and Switzerland. The two drafts were discussed article by article; the subsequent discussions resulted in a draft *International Treaty* with a code of *Regulations* which formed the basis of later drafts; this was followed by a draft *Additional Treaty* regarding the International Commission which it was desired to establish, and which was the first step towards the creation of the Central Office.

The second Conference, held in 1881, was entrusted with the revision of the draft of 1878, and of the series of proposals formulated by the various States which had participated in it. Certain improvements were introduced into the text; the *International Commission* for which provision had been made was converted, at the suggestion of France, into a *Central Office*. Next, Annex 1, which detailed the goods to be transported under certain conditions, and the form for international way-bills, was improved and completed; the questions of revisional conferences and of the duration and the coming into force of the Convention, were also settled.

The third Conference, held in 1886, continued the work of its two predecessors, and discussed proposals for improvement, the list of railways, and the Final Protocol prepared with a view to the Diplomatic Conference. The Final Protocol was signed by all the delegates, was accepted by all the Governments, and, after having received diplomatic sanction, was ratified; the final text of the *Convention of October 14th, 1890*, which was the result of the deliberations of this Conference, came into force on January 1st, 1893, at which time also the Central Office was entering upon its duties. The signatory States were those which took part in the first Conference.

The question of admitting new States had arisen even before the coming into force

of the Convention; as the procedure to be followed was not laid down by any of the terms of the Convention, a Diplomatic Conference was convened at Bern in the summer of 1893, in order to remedy this deficiency. It was impossible to arrange for free admission, in view of the reciprocal obligations which the contracting States undertook, both for themselves and in respect of the railways. The deliberations of the Conference resulted in the *Additional Declaration of September 20th, 1893*, which laid down the procedure—a very simple one—for admission to the Convention. Since 1893 Denmark, Roumania, Sweden, Serbia, Bulgaria and Norway have successively joined the Union of International Rail Transport. A request for admission by the Polish Republic has recently been transmitted to the contracting States; other States will shortly adhere to the Convention.

As regards articles the transport of which is allowed under certain conditions,—a list of which is shown in Annex 1 of the Convention—the Central Office observed, as soon as it began its work, that the list and the conditions for transport and packing were already some years old, and needed to be revised in order to satisfy to the widest possible extent the requirements of traffic, commerce and industry.

As early as 1893 the various schemes submitted were examined by a technical conference, convened for this purpose at Bern. The result of its deliberations was embodied in a Final Procès-Verbal with two annexes,—a *Revised Draft of Annex 1 (Articles the transport of which is allowed under certain conditions)* and *Draft Annex 1 (a) (valuables, artistic works and funerals)*. This was submitted to the Swiss Federal Council for transmission to the contracting States with a view to its being transformed into an actual Convention; it became the *Additional Agreement of July 16th, 1895*.

After this Conference, the Central Office undertook preparatory investigations for the first conference to revise the international convention; this was held in Paris in 1896 at the invitation of the French Government. With this object the Central Office prepared a list of questions to be dealt with. This list was based on the proposals and observations of the contracting State. The questions were classed according to the various articles of the Convention, and served as a basis for the deliberations of the Conference. The same States took part in the Conference as in that of 1878. The main objects were to improve the text of October 14th, 1890, to bring the versions in both languages into accord, and to profit by the experience gained during the first three years in which the Convention had been in force. The fundamental principles of that Convention, however, were not modified. The list of amendments effected was entered in a Final Procès-Verbal, which became the *Additional Convention of June 18th, 1898*; the latter, when ratified, was incorporated in the original Convention, and a new text came into force on October 10th, 1901.

Nine years passed before the summoning of the next Conference, which was known as the Second Provisional Conference. This Conference met at Bern in 1905. It made very few alterations in the text of the Convention; a series of improvements was introduced into Annex 1 in order to bring it into a line with recent progress. According to the usual procedure, the results of the deliberations of this Conference, in which Denmark and Roumania as well as the signatory States took part, were entered in a Final Procès-Verbal, which was subsequently transformed into the *Additional Convention of September 19th, 1906*. The new text of the Convention of October 14th, 1890, thus modified, has been in force since December 22nd, 1906.

Even at that time the Central Office had considered the question of revising Annex 1 to the Goods Convention, which no longer satisfied the requirements of the day, owing to new materials and new products which had been added to the traffic, and owing also to the special dangers connected with electric traction. In 1910 it proposed the convening of a technical conference and for this purpose submitted to the Swiss Federal Council in 1911 the complete draft of a new Annex. The Conference, in which Bulgaria also participated, met at Bern in July, 1912, and drew up a Final Procès-Verbal, which included the complete text of the new Draft Annex 1; the latter only requires to be transformed into a convention by a diplomatic conference and to be approved by the contracting States. The question of constituting a permanent commission to deal with requests for amendments to Annex 1 has not yet been settled. The Conference instructed the Central Office to draw up an alphabetical table for Annex 1 for the use

of railway officials, this table to contain a systematic statement of all the conditions regarding the transport of the numerous objects detailed in the Annex. This work was completed in 1913, and received the approval of the contracting States, but its adoption in the service of international transport was made conditional upon the coming into force of the new Draft Annex.

The question of a third conference to revise the Goods Convention was raised as early as 1911, but it was desired to await the approval and ratification of the Final Procès-Verbaux of the two Conferences which were then being held (the Passenger Conference of 1911, with which I will deal later, and the Technical Conference of 1912). This revisional conference was fixed in 1913 for the following year, but the Central Office proposed, for the reasons given above, to postpone it until the spring of 1915, in the hope that, in the interval, the instruments drawn up by the two above-mentioned Conferences would have been transformed into definite agreements. When the world war broke out, none of the contracting States had yet answered, and the conference was then indefinitely postponed.

The question of a draft international convention on the transport of passengers and baggage, which was not discussed by the Bern Conference of 1905, but was referred to the Central Office for necessary action, was again considered by the latter in 1908. In September of the same year, the Central Office submitted to the Swiss Federal Council a new draft which was transmitted in the following year to the States participating in the Goods Convention. A Conference assembled at Bern in May, 1911, and Sweden, Serbia,—the latter having recently entered the International Transport Union,—and Norway, which had shown a desire to participate, also took part in the deliberations. The labours of the Conference resulted in a Final Act, which included, in addition to the general and final provisions, a Draft Convention, Draft Organisation for a Central Office, and a Draft Final Protocol. This Final Act has now to be transformed into a definite convention by a diplomatic conference; the convention would then have to be approved by the signatory States and afterwards ratified by their Parliaments. It is to be hoped that these last formalities will shortly be accomplished. I will say only a few words regarding the Convention itself. It consists in the first place of a permanent section,—the actual Convention—and a non-permanent section,—the code of regulations for its execution, with the annexes relating thereto. It may be divided into four chapters, as follows :

I. The first chapter contains regulations of a general nature : scope, obligation to transport, responsibility of the railway for its employees and other persons; bases for calculating the cost of transport, validity of rates, monetary unit, application of national law.

II. The second chapter contains articles particularly affecting goods transport,—goods which may not be transported, or which may be so only under certain conditions; form and tenor of a way-bill; responsibility for the information contained in way-bills, and verification by the railway authorities; surcharges; preparation of transport contracts; duplication of way-bills; packing of goods; handing over to transport authorities; customs, octrois, and police formalities; calculation of the cost of transport, contingent expenses and outlay; payment of costs of transport, irregular application of rates, instructions, repayments, outlay; subsequent instructions by the forwarder, obstacles to transport, delay in delivery, and delivery; right of security granted to railways, obstacles to delivery; statement of losses or damage; responsibility of the railways for total or partial loss or damage, limitation of responsibility as regards the place of destination in the case of certain risks or loss of weight; presumption of loss of goods; amount and limit of compensation; declaration of interest in delivery; fraud or grave error; interest on the sum fixed as compensation; loss of the right to claim compensation; lapse of right of action against a railway; exceptional claims and counter claims; right to bring an action against a railway; collective responsibility of the railways, collectivity of transport.

III. The third chapter comprises all causes concerning settlements between railways following on the payment of compensation; the procedure for settlement, the special conventions dealing with settlements, restrictions on distraint for debt; the binding character of the proceedings before the competent court, execution of judgments and guarantees to be furnished to ensure payment of costs.

IV. The fourth chapter contains all the clauses relating to the Central Office of International Railway Transport, the list of railways affected by the Convention, the accession of new States, revisional conferences and the duration of the Convention.

Annexes. — *Annex 1* contains, indiscriminately arranged, the various instructions relating to articles accepted for transport under certain conditions.

Annex 2 consists of the standard type of way-bill.

Annex 3 contains the declaration to be made in each particular case of consignments delivered without packing, or with defective packing.

Annex 3a, the General Declaration for similar consignments.

Annex 4 consists of the specimen form for subsequent disposal concerning goods. Lastly, there is a Protocol with certain explanatory provisions for various classes of the Convention.

As regards the draft containing provisions with regard to the carriage of articles allowed under certain conditions, Annex I of the original Convention of October 10th, 1890, included 35 headings; but even by January 1st, 1893, it no longer met the needs of circumstances; new regulations and conditions for transport were drawn up at the Technical Conference at Bern in June 1893, but in this revision the articles were not grouped in categories; at the first Revisional Conference at Paris in 1896, a few modifications only were introduced, whilst the second Revisional Conference at Bern in 1905 devoted a considerable part of its time to the completion of the Annex, without, however, rendering it more systematic; this Annex now includes under 53 headings (several of which are double or treble) solids, liquids and gases, indiscriminately mixed, under the most various conditions regarding packing and transport.

Since 1910 the Central Office has been dealing with the reorganisation and recasting of this Annex, making use of the classification used in the French regulations of November 17th, 1897, for the transport of dangerous materials, and also of Annex C of the German transport regulations.

The draft scheme which resulted from the deliberations of the International Technical Conference at Bern in 1912, included six categories :

I. Explosive materials.

(a) Explosives for mining, and fire-arms.

(b) Munitions.

(c) Detonators and fireworks.

(d) Compressed and liquefied gases.

(e) Materials which, when in contact with water, release inflammable gases, or which facilitate combustion.

II. Materials liable to spontaneous combustion.

III. Combustible materials.

(a) Liquid.

(b) Solid.

IV. Poisonous materials.

V. Corrosive materials.

VI. Offensive or evil-smelling articles.

Provisions regarding measures to be taken on lines operated by electric traction had not yet been issued, because electric traction was still in its infancy, and it was desired to avoid complicating the application of the revised Annex.

The Central Office was instructed by the Conference of 1912 to draw up an alphabetical list, for use at stations, of the articles contained in Annex I. As this list had to be translated in most of the countries, the Office did not adhere to the alphabetical order, but kept strictly to the classification and numbering of Annex I, which it drew up in the form of tables, giving in respect of each article the whole series of successive operations, namely, category, description, lettering and addressing on parcels, external or internal packing, declarations and references in the way-bill, nature of the goods transported, weight, combination or exchange with other articles, wagons used, tank-wagons, handling during the journey, special requisitions regarding the goods, unrestricted demand, empty receptacles, handling after acceptance, precautionary measures taken, exceptions, and so forth. Special measures regarding the manufacture of receptacles, disinfection and police measures to be observed, also appeared in the Annex. This practical and sensible solution will enable railway stations and forwarding agents

to dispense with the text of the Annex itself, as it is contained in its entirety in the list thus drawn up. It now only remains for the Annex itself to be approved.

As Article 3 speaks of rolling-stock, the Chief of the Technical Division of the Swiss Railways at Bern has asked me to give you some information regarding *technical unity*. As you know, it is the Federal Department of the Swiss Railways which has under its direction the technical unity of railways.

The object of technical unity is to lay down instructions regarding width of gauge, technical conditions of goods wagons used for international traffic, and the regulations regarding the sealing of wagons which have to pass through a customs office. Those regulations do not directly concern the public; they are conveyed to the railways through the agency of the competent authorities of the various States concerned. They are, in short, provisions intended to regulate and facilitate the international transport of goods; an attempt has been made to regulate, as far as possible, the conditions which the rolling-stock must fulfil in order to enable it to travel on main lines, especially between Italy and Germany and between France and Austria. As early as 1880 the Swiss Government had prepared, in anticipation of the opening of the St. Gothard, draft regulations to facilitate the transit of rolling-stock.

The first Conference took place at Bern in 1882; it included delegates from the four States which are neighbours of Switzerland. It produced the *Final Protocol of October 21st, 1882*, which contains the technical conditions to be fulfilled by rolling-stock intended for international traffic, and also provisions as to gauge; it further provides for the use of a standard loading-gauge, and the maximum general dimensions of carriages and wagons. The Conference also aimed at the adoption of a uniform method of sealing wagons which have to pass through the customs.

A second Conference, held at Bern in 1886, continued the work of the Conference of 1882. At this Conference, in addition to Germany, Austria-Hungary, France and Switzerland, the following new States were represented : Belgium, Bulgaria, Greece, the Netherlands, Roumania and Serbia. The results of this Conference, in so far as they related to technical unity properly so-called, were embodied in a Final Protocol, and again in a second Protocol relating to the sealing of wagons which have to pass through the customs. The States were also asked to send the dimensions of their loading-gauges to the Swiss Government with a view to their yearly publication, together with a map of the railway systems open to international traffic.

A third Conference met at Bern in 1907, at which the following States were represented : Germany, Austria-Hungary, Belgium, Bulgaria, Denmark, France, Greece, Italy, Luxemburg, Norway, the Netherlands, Roumania, Russia (only in respect of 520 kilometres of line to the left of the Vistula), Serbia, Sweden and Switzerland. The *Final Protocol on Technical Unity*, properly so-called, includes conditions relating to width of track, construction of rolling-stock (wheels, buffers, couplings, projecting parts of vehicles, sectional dimensions, locks of passenger coaches, sliding doors, notices), the conditions for maintaining this stock (defects justifying refusal), provisions for the loading of wagons, and finally provisions for the summoning of Conferences, the adherence of new States, the approval of decisions arrived at by the Conference, withdrawal from the Union, standard signs for vehicles, and the double key for coaches used for international transport. At this Third International Conference in 1907 a *Final Protocol* was drawn up regarding the sealing of wagons which pass through the customs, laying down the conditions guaranteeing the safe sealing of these wagons.

The decisions of this third Conference were revised in 1911 and 1912 by an International Conference to establish a standard gauge for goods wagons, determining the transverse dimensions of vehicles and loads. The Final Protocol of December 14th, 1912, includes some modifications of the text of 1907, and it is this new text, called the 1913 Text, which is now in force; it includes among other provisions, the introduction of the **T** within a square, denoting transit wagons, that is to say goods wagons which may run without verification on all lines open to international traffic (except lines explicitly excluded), and also the maximum standard dimension gauge for goods wagons and the load tables (*tableaux pour chargements*).

I must again remind you that in 1909 an International Commission was instructed to draw up a programme for the conditions laid down in respect of continuous brakes for goods trains; the result of these deliberations was embodied in a Final Protocol,

describing first the conditions to be fulfilled by the brake, the programme of the experiments to be carried out, and the invitation to the Swiss Government to transmit to the Contracting States the Final Protocol and the proposals concerning the adoption of a continuous brake. The Swiss Government was also requested to come to an agreement with the Contracting States with regard to the action which they might think it advisable to take in pursuance of the proposals contained in the Final Protocol.

The question of the continuous brake became of capital importance. In 1912 and 1913 experiments were made in Austria and Hungary, with regard to which detailed accounts have been published giving all the desired information; but the trials were interrupted by the war and no further steps could be taken as regards international continuous brakes; it is to be feared that isolated attempts may only prejudice its universal adoption, and it is extremely desirable that the whole of this question should be again considered from the international point of view.

The Swiss Government still considers itself responsible for the maintenance of technical unity, and it would be most desirable if an opportunity could be found at Barcelona to draw the attention of the delegates of the various States and administrations to the great importance of technical unity in international traffic.

To sum up, the contracting States comprise practically the whole of continental Europe : Austria, Belgium, Bulgaria, Denmark, France, Germany, Hungary, Italy, Luxemburg, the Netherlands, Norway, Roumania, Russia, Serbia, Sweden and Switzerland, and they now contain all the elements for a complete code of transport, providing for the transport of passengers, baggage and goods, as well as the final provisions. There also exists a standard registration ticket for baggage and an international way-bill for goods, the usefulness of which has already been proved. Perhaps the other continents will find in these provisions the basis of a similar arrangement which they may be able to conclude and adapt to the special circumstances of each.

The PRESIDENT (speaking in French). — I thank the Director of the Central Railway Office for the detailed statement which he has made. The whole Conference fully realises the importance of basing our debates on a really practical foundation.

M. BIGNAMI (Italy; speaking in French). — Italy has gladly welcomed the Draft Convention on the International Regime of Railways, which will have the effect of enlarging the sphere of application of certain principles which have already been adopted in several countries and which, in view of their great and universally recognised usefulness, form the subject of reciprocal obligations. Italy is convinced that such an admirable means of communication cannot yield the full results which we are entitled to expect unless a general understanding is arrived at to enable the systems in force on railways to be made as uniform as possible. This idea is an old one. No sooner had the development of this means of transport, as yet less than a century old, facilitated and increased communications between neighbouring countries, than it was found necessary to conclude agreements and to enter into mutual engagements in order to afford all possible facilities to passengers and to trade in general. These agreements permitted the growth of new communications and systems of transport which it would otherwise have been impossible to provide. As you all know, the operation of railways is governed largely by agreements of an international character, for example, as regards the exchange of rolling-stock, which enables goods to be sent and passengers to be transported for distances of thousands of kilometres without transshipment; the laborious drawing-up in common of railway time-tables both for international trains and for connections, a system which enables the greatest possible speed to be attained, both for long journeys and in the transport of perishable goods; the regulations in force between neighbouring countries in respect of the services at frontier stations, in order to enable passengers and goods to be transported from one country to another as quickly and conveniently as possible; the institution of through tickets between different countries, which make it possible to travel without taking a fresh ticket at each frontier; and the establishment of uniform scales of charges, thus affording the public, among other great advantages, that of knowing in advance, and with certainty, the cost and conditions for the transport of goods from one end of a journey to the other.

Finally, as M. Etienne said, thanks to the brilliant idea and perseverance of two Swiss citizens, M. Christ and M. de Seigneux, international legislation has been in force for more than thirty years regulating the relations between the public and the railways. These relations have been greatly simplified and unified by this legislation, to the great benefit of trade; indeed, the general uncertainty and the obstacles which prevented consignors from securing respect for their rights—though these were guaranteed by law in every country through which the goods were sent—sometimes led the consignors to renounce these rights.

You see then that the Draft Convention which we are to discuss marks a new stage on a journey which is already half completed. Several of the principles laid down in the Preamble and in Articles 1, 2 and 3 have for long been observed in practice by all those countries which clearly understand their usefulness, not to say their necessity. There is therefore, I imagine, no need to discuss these principles except to define more closely the obligations which we are to undertake.

Having said this, it seems to me that the excessively cautious form of the Draft before us, in which the High Contracting Parties agree to recognise as highly desirable the adoption of the measures contemplated, might with advantage be replaced by a more definite obligation, on the model of those contained in the Conventions on Freedom of Transit and on Navigable Waterways. In the opinion of the Italian Delegation, however, the principles laid down in Article 4 call for more careful treatment; in particular, the first paragraph of this article is of great importance. These principles affect several aspects of the economic policies of many countries, and these policies cannot be modified. We must point out that no country would be bound to modify its economic policy solely in order to conform to the theory of perfect equality, especially in view of the fact that, in other points in all these draft Conventions, many other exceptions to this theory have arisen. The provisions of this article are the result of long discussions, and finally of one of those compromises which have rendered possible the Conventions which we are discussing. In the interest of the goal at which we are all aiming, the Italian Delegation ventures to draw the attention of this assembly to the dangers inherent in the above-mentioned principles, by expressing the wish that these principles should be left untouched except as regards form, or in order to define more exactly—and Italy considers this necessary—the justifiable exceptions which appear at the end of the paragraph. The application of these provisions, if not left to the free interpretation of each country, might be thwarted by certain systems of law which could not be modified without gravely injuring economic situations based on facts of a different nature and the result of long experience. You are aware that the laws which deal with the policies of railway rates has not been merely improvised; it is not empirical, and it could not be changed from day to day, however great might be the desire to adopt principles of uniformity.

The second paragraph of this article merely repeats the principle laid down in the International Convention on Railway Transport, and it is to be hoped that those countries which are not yet parties to this Convention will not raise difficulties in this respect. With regard to the rest, the Italian Delegation considers that everybody will be in agreement.

Finally, this Delegation desires to submit to the favourable consideration of the assembly a proposal which would not go beyond the limits of the Convention, and the object of which would be to bind any State which may decide to electrify a line on the frontier, to assist as far as possible a neighbouring State which might do the same, but which might be in difficulties through an insufficient supply of the necessary power. From the point of view of international communications it would indeed be a great pity if the development of this new means of traction, the great usefulness of which is undeniable, were hindered through lack of electrical power, if the latter could be granted to a poor country by a neighbouring country which had an abundant supply of it.

The Italian Delegation therefore expresses the sincere desire that the work of the Conference may shortly bring forth all the fruits which may be expected from the reconstruction of communications and the development of relations between nations, which would hasten the march towards the common goal,—the consolidation of Peace for the benefit of progress and civilisation.

M. CARLIN (Switzerland; speaking in French). — The Swiss Delegation thinks that it should now take part in the general discussion on the Convention regarding the international regime of railways. The Federal Government is only too glad to give its support to the provisions contained in the Draft Convention. Nevertheless, in its capacity as the authority entrusted with the duty of organising and supervising the International Offices now existing at Bern, it must now call attention to the following facts :

Article 24 of the Covenant lays down that *there shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent.*

The Swiss Delegation will therefore welcome any provision which is in conformity with the spirit of this article; that is to say, the Swiss Government will agree to the placing of the international offices at Bern under the direction of the League of Nations, as soon as all the States Members of the Unions for which these offices have been created shall have given their consent.

In virtue of these considerations the Swiss Delegation intends to submit a written amendment to Article 6 of the Convention.

M. von der LEYEN (Germany; speaking in French). — The Draft International Convention on Railways is distinguished from the Conventions which have hitherto been dealt with, in that it does not concern universal means of transport, but only the railways of connected territories. It would thus be impossible to conclude, for example, Conventions between European and American or Australian railways. This is equally valid as regards the special Conventions provided for in Article 4. Several of these special Conventions have been concluded between European railways. I need only recall the International Union of German Railways, established in 1846, which includes not only the German railways but also those of Austria, Hungary, the Netherlands, Roumania and a part of the former Russian railways; by means of this Union, many of the desiderata mentioned in Articles 1 to 3 have already been accomplished. The Union has already been in existence for seventy-five years.

Since the conclusion of the Bern Convention on October 14th, 1890, the greater part of the European railways form a unit by which all the conditions provided for in Articles 1 and 2 are, or will be, realised, and even exceeded. This Convention covers most European railways, and also the Russian and Asiatic Russian lines. The total length of those lines is 270,000 kilometres,—more than a quarter of the total mileage of all the railways in the world. This Convention is not mentioned in the Draft Convention. The explanation given upon page 88 of the *Green Book* (1) contains, however, the following recommendation :

The League of Nations will not succeed in its mission by making a clean sweep of all that has gone before, but only, on the contrary, by setting its seal upon every effort which has already been made towards the cause of international co-operation and the achievement of the task now set before the League. It should lend its support to the maintenance, in their integrity, both as regards their methods and their field of activity, of any existing organisations of proven worth, such as that created by the Convention of Bern of October 14th, 1890.

This leads to the presumption that this Convention is to be maintained to the full extent of its scope and provisions, and that the organisation which it provides is to remain intact in its present form, and is not to be brought into relation with the League of Nations except in so far as its annual reports are henceforward to be communicated to the League. This provision is also in conformity with Article 366 of the Treaty of Versailles, which provides expressly that the Convention, and any subsequent additions to it, shall be maintained in the first place for a period of five years, and that, after the lapse of that period, its terms should be revised. Arrangements had already been made before the war for such a revision, but the war prevented it from taking place. Other reasons which render it necessary have arisen as a consequence of the war. Certain of the Contracting Parties to this Convention no longer possess the same extent of territory, and their railways have been allocated to other new States. Moreover,

(1) See p. 209.

the financial provisions of the Bern Convention require revision, by reason of the present state of the rates of exchange. As I have already said, all the European States, with the exception of Spain, Portugal, Turkey, Greece and Great Britain, adhered to the Bern Convention. It would certainly be desirable that, when it is revised, or even before, all the Continental States should take the necessary steps to accede to the Convention. In my belief, the Contracting Parties to the Convention would certainly welcome such a request. As regards Great Britain, the situation is somewhat different; there does not yet exist any direct communication by rail or train-ferry between the Continent and Great Britain. Moreover, I believe that the position of British railways as regards civil law is different from that of the railways in the States forming part of the Bern Convention. These difficulties are, however, not insurmountable, and I venture to remind you that at a meeting of the *International Law Association* held in Berlin about ten years ago, the representatives of British jurisprudence present expressed their great desire that Great Britain should adhere to the Bern Convention.

It seems to me clear that the proposed revision cannot alter the principles of the Convention. I may remind you that at the first Revisional Conference, held in Paris in 1896, the President, M. Alfred Picard, the famous compatriot of the French Delegation, expressly declared in the Preamble that as the provisions of the International Convention had proved their worth, it would be well to refrain from making any fundamental changes.

The Bern Convention in its present form only applies to the carriage of goods; it will therefore have to be extended in order to include the transport of passengers and luggage, as well as mentioned in Article 2 of the Draft. You know, of course, that as early as 1911 an International Draft Convention for the transport of passengers and luggage was drawn up with the collaboration of all the States interested in the International Bern Convention; this Draft only requires to be approved, and could easily be inserted in the existing Convention,—indeed, provision was made upon the occasion of the revision in 1915.

The other States of the world would, of course, have to be left free to conclude similar agreements amongst themselves.

Article 3 of Annex 4 expresses the desire that the Contracting Parties should also come to an agreement on the subject of certain technical questions touching the operation of railways. As far as most European railways are concerned, this recommendation was fulfilled by the Technical Conventions of May 15th, 1896, and May 18th, 1907. Article 282, Section 4 of the Treaty of Versailles, which gives a list of the International Conventions which are to remain in force, particularly mentioned the Convention referred to above, while Article 370 compels Germany also to adhere to this Convention. I do not wish to enter into the details of such Technical Conventions; M. Étienne has already spoken of them. They still give rise to great financial difficulties. I would only remind you of the differences in the width of gauge, the unification of which would give rise to very great expense. I do not think it is probable that these non-European States whose railways are not of the so-called “standard” gauge of the European railways will decide to expend considerable sums for this purpose. Certain results were obtained through an attempt made before the war on the Australian railways, but, so far as I know, it has not hitherto been possible to put these to practical use on account of the great financial difficulties involved.

While the Draft Convention is in general confined to the expression of a desire for the unification of international equipment, paragraph 2 of Article 4 contained the following text, which is a definite one :

The aforementioned conventions shall also provide that transport rates be calculated in accordance with the tariffs legally in force and duly published, and that any private agreement having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void.

This ruling, which raises a very serious question, is taken from Article 11 of the Convention of Bern, which, however, refers only to rates for international traffic; in 1886 all the Contracting Parties refused to curtail their liberty as regards the regulation of *home* traffic, and declared that these provisions were to be found in the regulations for home traffic in every country. The League of Nations would therefore have the right

to interfere in the sovereignty of different States on the question of fixing tariffs, which has always been left to the sovereignty of the different States. It will not be easy to exercise these rights, and it appears extremely doubtful to me whether a number of non-European States would be inclined to submit to such a ruling. A similar ruling is, however, already in force for traffic between the different States of the United States (Inter-State Commerce) in conformity with the *Inter-State Commerce Act*; but, as regards home traffic, this ruling has not been carried out everywhere. I do not know how the matter stands as regards the railways of South America, Asia, and elsewhere.

The German Delegation is in a position to declare itself in agreement with this ruling, which is already incorporated in our regulations for transport (*Verkehrsordnung*).

The German Delegation has no objections of any importance to the other proposals contained in the Draft, if it is understood that the Convention of Bern would be maintained in its present form and enlarged in conformity with the provisions which it already contains. When the time comes for discussing details, certain changes may be found desirable, and may perhaps be the subject of special deliberations; but as regards the general principles of the Draft Convention, the German Delegation declares that it agrees to them, and is of opinion that as a result of this Convention the economic relations of all States will experience a very desirable improvement.

The meeting adjourned at 12.50 p.m.

FIFTEENTH MEETING OF THE CONFERENCE

(Thursday, March 31st, 1921, at 11.30 a.m.)

GENERAL DISCUSSION (CONTD.) — LIST OF MEMBERS OF RAILWAYS COMMITTEE

The meeting opened with M. Hanotaux, President, in the Chair.

GENERAL DISCUSSION (contd.)

The PRESIDENT (speaking in French). — We will resume the general discussion on the Railways Convention.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The regulations of the International Regime of Railways are of great importance to Brazil. This is not because our country is at this moment served by railway systems already connected with those of neighbouring countries, but because in a not far distant future the Brazilian railways will necessarily form the shortest means of communication between the greater part of the Atlantic coast and that of the Pacific. It may safely be said that the Brazilian railway system is called upon to play a great part as regards relations between Europe and most of the countries of South America. When the basins of our great rivers are connected with each other by rail, Brazil will certainly be the great centre of communications within the continent, and the international importance of our railways will be very considerable. For this reason the Draft Convention which has been submitted to us concerns our country very closely.

The authors of this Draft have shown great wisdom. They have not lost sight of geographical differences, and they have left the contracting parties very extensive freedom to conclude *inter se* conventions. The scheme permits of all combinations between neighbouring countries which can be achieved without any prejudice to the general interest.

Brazil, then, considers the Draft acceptable, but we must not go further. The situation of the countries of South America as regards railways, and particularly that of Brazil, is very different from the European situation or from that of North America. With us the railway problem presents difficulties, both economic and financial, which in Europe have not to be overcome. It will be enough for me to remind you that Brazil is still passing through a period of construction,—a difficult period for us. There is scarcity of labour, there is insufficiency of capital; raw material must be imported from distant countries, bridges, viaducts and so forth are constantly required in a country which abounds in natural difficulties of every kind. It is true that we already possess nearly 30,000 kilometres of line in operation, and this undoubtedly marks considerable effort. But what is this figure compared with what must be attained in order to connect all the points in a vast territory of 8,500,000 square kilometres?

You will understand, then, how difficult it would have been for us to agree to any Convention which is not restricted to generalities. I must add that the Brazilian railways are not yet all connected with each other; that of the State of Rio Grande do Sul is the only one which touches the frontier. This was the first occasion necessitating an agreement between Brazil and Uruguay for the purpose of regulating the carriage by rail of goods coming from one or the other country or simply in transit. This agreement was signed at Rio de Janeiro on May 15th, 1913.

These few indications are enough to prove to you the anxieties which attend and the very legitimate interests which must govern our consideration of the Draft of the Convention on the International Regime of Railways.

The first two articles contain very practical conditions which should be adopted wherever possible. Article 3 concerns the mutual employment of rolling-stock. Whilst recognising that it is very desirable that the Contracting Parties should adopt all measures, including technical provisions, calculated to permit and facilitate the mutual use as well as the exchange of their rolling-stock, we must state that we cannot accept this condition except as a simple indication, a recommendation, according to the wording of the Draft itself. We sincerely regret that we cannot share the view of the Italian Delegation upon this subject.

It would perhaps be of interest if I tell you that though the technical conditions on certain of our lines are uniform, this uniformity does not yet extend to the whole of our lines. I may add that at present rolling-stock is exchanged only upon a limited portion of the lines. You will see from this alone that the aim before us, the complete unification of the railways which cross the same continent, has not yet been attained in the largest country of South America. I therefore venture to urge you to restrict yourselves to the general terms which have been proposed to us.

Article 4 of the Draft contains very useful suggestions, which we can accept; but we should be glad if this article were completed. In Brazil there are no tariffs based upon the origin of goods. The transport of passengers is carried on under complete conditions of equality, whether they are Brazilians or foreigners. There is nothing in this article, therefore, contrary to the general practice of our country. We do not see any difficulty in agreeing that the special Conventions which the High Contracting Parties are called upon to establish should *contain stipulations expressly forbidding the concession of facilities or the establishment of tariffs... which would depend upon... the flag or ownership of the vessels which have been or are employed before or after their transport by rail*. This is a very just principle, and we give our full adherence to it. We wish, however, that Article 4 had been completed in the sense that the special Conventions should provide for an exception to this principle in cases where the owner or the charterer of the vessels should establish differential freight tariffs based upon the nationality or the ownership either of the consignor or the consignee.

We are faced here with the same circumstances as apply in the case of Article 2 of the Transit Convention, which gave rise to the addition proposed by the Brazilian Delegation (1). This reservation, again, seems to us quite justifiable. In our opinion it is in conformity with the spirit and the letter of Article 23 (c) of the Covenant.

The foregoing remarks are a summary of the ideas suggested to us by the Draft Convention. Naturally, minor alterations will need to be introduced in order to bring the Draft more into accord with the Transit Convention. At the same time, allowance will have to be made, when Article 11 is drafted, for the provisions already drawn up concerning the powers of the Advisory and Technical Committee on Communications and Transit.

One final remark and I will conclude. As soon as a problem of international life arises and a solution is contemplated, an inevitable succession of questions immediately appears, each constituting an essential element of the problem which has been considered. This is the case, for example, with fuel in connection with the problem of communications. Transport by rail implies the necessity for fuel. But there are countries where considerable traffic must be carried by rail and which nevertheless have no fuel. Others, more favoured by Nature, have an abundance of such fuel. The former are obliged to purchase from the latter this fuel which is indispensable for the running of their locomotives. As railway traffic varies, then, according to the distribution of raw materials, and as this in its turn is unequal, it appears highly desirable in the general interest that those who have the good fortune to possess raw materials should grant favourable conditions to those who are in need of them.

It is certainly not possible to stop to consider this question here; it is obviously of a commercial nature. But it is so closely connected with the working of that great

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, pp. 58, 183, 191 and 255.

instrument for the exchange of goods, the railways, that it would perhaps be necessary to bring it to the notice of those who are to continue the work of the Conference; in our opinion this would only be the logical consequence of the programme which has been submitted to us.

It is in a spirit of international solidarity, of loyal and active collaboration that we venture to draw your attention to these aspects of the most complicated problem alluded to in Article 23 of the Covenant. This is our point of view and our wish. We are all animated with the same desire for the success of the efforts of this Conference. I will thus terminate with the words *sursum corda*, and now let us work for the common good.

M. ORTUÑO (Spain; speaking in French). — I have asked our President, whose courtesy we know so well, to allow me to speak to you on three questions of international importance with which Spanish opinion has for long been occupied. These three questions are, in the first place, the "direct" line Pyrenees-Madrid-Algeciras; in the second, the gauge of the Spanish lines; in the third, the situation of Spain with regard to the Bern Convention. I thought that it might be desirable for me to give the Members of the Conference on Communications and Transit certain information on these points.

The scheme for the direct line Pyrenees-Madrid-Algeciras is completed as regards the section between the frontier and Madrid, and has reached the stage of a preliminary draft scheme for the section Madrid-Toledo-Seville-Algeciras. You will see how much that means from the point of view of universal transit; henceforward Spain will become more and more the country through which transit must necessarily pass between Central and Western Europe and Africa and America. The length of the line will be very greatly reduced; instead of the 641 kilometres of the present line Irun-Burgos-Valladolid-Madrid, the new line will be only 410 kilometres long. The maximum gradient will be 2 % and the minimum curve-radius 400 metres. The line will be operated by electric traction with a continuous current of 3,000 volts, and the distance will be covered in 6 or 7 hours instead of 12 hours. As regards the line from Madrid to Algeciras, *via* Seville and Toledo, the total length of line will be 630 kilometres instead of 744, and the time taken will be from 8 to 9 hours. The maximum gradient will be 1.5 per cent., the minimum curve-radius 600 metres; the system of traction will be electric. The total length of this line will thus be 1,040 kilometres instead of 1,385. At the moment various half-way solutions are being considered which would include the utilisation of certain lines already in operation. This question is of importance to all those who are here, since it is in conformity with the fundamental aims of the Conference.

The second question particularly concerns Spain, and on account of it we have been obliged to submit an amendment to Article 3 of the Draft Railway Convention which we have before us. You will understand why Spain does not decide to make a change at once; she does not do so because she does not believe it possible.

In Spain the stipulations in force to-day with regard to railway traffic are in no way opposed to the principles of the Draft Convention on the International Regime of Railways which we are now discussing. The only limitations to freedom of transit are those imposed upon us by the capacity and technical conditions of our railways, and by the measures rendered necessary for protection against smuggling. There is absolute equality of treatment in Spain, with no discrimination as regards flag, country of origin, starting-point or destination, either for passengers or for goods. We know, of course, that there exists a difficulty of a technical nature which prevents the rolling-stock of Central and Western Europe from running on the railways of the Iberian Peninsula. That this is impossible is due to the fact that the normal Spanish gauge is, as every one knows, 23 centimetres wider than the European gauge. The same is true for Portugal.

The regulations governing the construction and operation of the Spanish railways were drawn up in 1844, and it was then that the width of the gauge was fixed at 6 feet, —the difference is thus explained, since the Spanish foot is 28 centimetres in length instead of 24 centimetres; that is to say, the width of the gauge was fixed at 1.736 metres from rail to rail. It was considered that transport capacity and the stability of express trains would thus be increased. But this wide gauge means that curves

must be made with a larger radius, and, in a country whose topographical features are as varied as is the case in Spain, this involves much greater initial expenditure. The gradient has often to be increased, to the detriment of the carrying capacity, which it was intended to increase, and this capacity is decreased by the fact that the loading-gauge adopted differs little from that of the rest of Europe; in a word, the topography of the country has disappointed our anticipations. It is clear, then, that this difference in gauge involves inevitable technical as well as economic difficulties, and difficulties of general circulation between the system of the Iberian Peninsula and that of the rest of Western and Central Europe.

No doubt it is possible to change the Spanish gauge to the normal European gauge. Gauges were narrowed long ago in other countries. We may mention Canada, where the Grand Trunk and the Great Western were constructed with a gauge of 1.678 metres. The former company made the change on its main line, more than 900 kilometres in extent, in the night of October 3rd, 1873; but it had to employ several years in the requisite preliminary work. In the U. S. A., the transformation of the 16,030 kilometres of lines in the South, on which the gauge was reduced from 1.525 metres to 1.448 metres, an extent of 77 millimetres, was also effected very rapidly,—after a long period of preparation, however. The final operation began on May 21st, 1886, and the trains were again running on June 2nd following. In England the Great Western Railway constructed its first line from London to Bristol with a gauge of 2.135 metres. In 1867 this company's system had 2,300 kilometres of this gauge, several sections of which, however, had a third rail allowing standard-gauge trains to run on these lines. The work of changing this line to the standard gauge of 1.435 metres was begun in 1869. In 1892 there were still 270 kilometres of line of the 2.135 metre gauge. In order to transform this remaining length of line, traffic on the section was entirely suspended on Saturday, May 21st and Sunday, May 22nd, 1892. Despite the rapidity of this final operation, the complete transformation of these 2,300 kilometres of line took no less than 23 years.

In Spain the change would, I think, be very much more difficult than in the countries to which I have referred. The American and Canadian lines and most of the Great Western were double track, whereas in Spain we have only very short distances of double track. It must be remembered also that in the countries mentioned the lines which had to be changed were exceptional cases; in changing them, therefore, substantial advantages accrued, and these lines were put into communication with the other railway systems of the country. In Spain the difficulties during the period of transformation would be very considerable. In order to put a line,—for example, the line from Barcelona to the frontier—in direct connection with the French lines, communication between this line and the rest of Spain would be interrupted for several years. I cannot even discuss the solution of having recourse to a third rail, which was fully examined long ago and finally rejected. I do not intend to enter into technical considerations on this point; everyone here is acquainted with them.

What would be gained by this change of gauge? It would bring no benefit within the country itself. The benefit would be reaped only by a certain portion of the international traffic which passes by the French frontier; on the other hand the change would mean the complete isolation of Portugal, and could not take place, therefore, without a previous agreement with our neighbours, who indeed adopted our gauge with the very object of avoiding difficulties of communication with us. As regards the benefits which Spain would secure, an idea of these may be formed from the statistics of passenger and goods traffic *via* the French frontier. In normal times, shortly before the war, the number of passengers who crossed from France to Spain and *vice versa* by the two present lines,—Cerbère-Port Bou and Hendaye-Irun, represented a proportion of 1.84 per cent of the total passengers carried on the main lines—12,000 kilometres in length—in the interior of Spain. It should be recalled, too, that as a rule not all passengers who crossed the frontier would avoid changing trains under the new conditions, since the new system would only apply to direct express and *de luxe* trains, the traffic on which represents some 15 per cent of the total traffic of passengers to the frontier, that is to say, less than 1.3 per thousand of the total number of passengers carried on the Spanish railways.

Then as regards the goods traffic; shortly before the war, exports and imports by the

two international lines amounted to 322,879 tons. This will increase, though certainly not to any very great extent, when the three new trans-Pyrenean lines are open for traffic. If this international traffic is compared with the total goods traffic within Spain, which amounts to 21,650,755 tons, it is clear that the proportion is not even 1.5 per cent, and is still further reduced when it is remembered that not all goods would pass the frontier without transshipment; even if this were so as regards all exports, which mainly consist of natural products, a considerable proportion of the imports, being manufactured goods, would have to be unloaded for customs purposes.

Spain might in addition have to fear that the inequality which periodically arises between the amount of her exports and her imports might occasion exceptional demands for rolling-stock beyond her frontier; she would thus find it difficult to meet her internal traffic requirements. Apart from this consideration, which is of very great importance, serious difficulties connected with such a change of gauge would arise from the change itself; such as the very considerable cost of the necessary work and the disorganisation in internal transport, which might persist for many years. The cost of this work, which was under consideration in 1913, amounted to 1 milliard pesetas, and to-day the figure would be considerably higher; at present prices the work would probably cost double. We must point out that this sum would produce great benefits at the present time if it were employed on the construction of a double track where such does not yet exist, or on perfecting the present tracks, improving or extending equipment, the construction of rolling-stock to meet the increase of traffic, and finally on the construction of a system of secondary lines. We have also to consider the construction—a matter of lasting importance to us—of a direct line from the French frontier to Madrid and Algeciras, the cost of which, as we have stated, would be exactly 1 milliard pesetas.

In my opinion all that we have said clearly shows that the Spanish Government cannot possibly contemplate transforming its railway system at present (this phrase allows some hope for the future), in spite of its great desire to facilitate transit; it will, however, carry out this change as soon as the circumstances which have been mentioned will permit. We cannot forget, however, that Spain, through her geographical situation at the extreme end of Europe, is not only the transit country for Portugal, but also for America, where there are many nations who speak in common with us the language of Cervantes and Camoens. Moreover, we are close to Africa. At Gibraltar a distance of only 12 kilometres separates the two coasts. We think of Dakar when we think of South Africa, and we think of the industrial and commercial development of the whole of this great continent, whose northern coasts we can see from our own coast, and which extends as far as the great British Dominion of Cape Colony, which some future day will see united by railway to Tangiers.

In view of all that we have pointed out, the Spanish Delegation has presented an amendment to Article 3 of the Convention on Railways, to the effect, as you will note, that Spain cannot at present agree to alter the gauge of her lines.

A few words more, if you will permit me, upon the third point,—our accession to the Bern Convention. On this subject, to which reference has so often been made during this general discussion, I will venture to remark that negotiations between the Central Office at Bern and the Spanish Government have been proceeding for some time. Recently, in August 1920, the Office discussed the question with the Spanish Minister at Bern, who then informed him, in October 1920, that he had been instructed by the Minister of State, by Royal Decree, that the Note of the Central Office dated August 29th, 1920, had been communicated for consideration by the Ministry of Fomento (Public Works).

I may say that the Spanish Government is considering the question with all the interest which it deserves, in order to be able to overcome the difficulties due to the fact that, in pursuance of special laws, the railways are at present conceded to private companies. The question will therefore have to be submitted to Parliament. I need not add that the Spanish Delegation is most anxious to see the realisation of the desire which has been expressed that Spain should accede to the Bern Convention, which, in principle, honours the aspirations of the Covenant, since it represents the abolition of frontiers for international railway traffic. It is an anticipation of the work of the League of Nations, and, in fine, it favours that freedom of transit which, in a word, it is our fundamental desire to attain.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — After so many speeches it is perhaps superfluous to dwell any further on the importance of means of transport. I will, however, venture to enumerate a few of their duties. Means of transport are not only an element of security for a country, but also a creative agency for everything, whether material or ideal, which exists in this world of ours. They are the channels through which material and ideal products are distributed as equitably as possible. The most important of all the means of transport are railways; they triumph over all obstacles, valleys as well as mountains.

The geographical situation of our country is such that, after having served as a barrier against invasion, it is now, and always will be, a central junction for transit between East and West. We are inspired with the keenest desire to serve the world in the matter of transit. Nevertheless, as Sir Francis Dent said in his admirable report, and as has been said by other delegates, we must not neglect the vital interests of our own country while serving the common cause. Sir Francis Dent very rightly pointed out that, as regards the application of the Convention, there will be difficulties in countries where the railways belong to the State. It is a fact that in those countries the construction of railways has called for sacrifices from the tax-payers, and these tax-payers demand advantages to compensate them for their sacrifices. I would draw the attention of the Conference to this point in order to explain certain reservations which it is our purpose to make regarding the application of the Convention,—reservations which, however, will only affect methods of procedure. While we admit freedom of transit and the principle of equality in connection with Members of the League of Nations, we ask that the country itself should be assured of the right to control its own rates as regards imports, exports, and transit. Means of transport are, in fact, a weapon in the economic struggle. Take the case of two States *A* and *B*, whose traffic passes through a State *C* on its way to a State *D*. *A* and *B* are competitors in respect of certain products, and are competing to conquer the markets of *D*. If you allow two States to compete with each other in the territory of a third State on their way to a fourth, how can you forbid the country *C*, through which the transit takes place, to protect itself in an equitable manner? I think this example is sufficient, and I will not press the question further. I will merely state that our country is inspired by the principles laid down in the general Convention on Railways. We accept that Convention in the form in which it has been drawn up, but when proposals are put forward with a view to modifying it, either in form or in substance, we shall have more to say on the subject.

I will conclude by recalling the words spoken by our President, M. Hanotaux, at the Geneva Assembly, when he was deputed to report on those questions : *No question is more important from the point of view of technical organisation than that of the organisation of communications.* A little later, the French Prime Minister, M. Briand, on assuming office, expressed himself as follows in Parliament : *The first question which calls for our attention is that of communications, the necessity for free transit, and the ability to re-establish communication between peoples ;* while at the same time the British Prime Minister, Mr. Lloyd George, said that every country is in a state of unrest owing to the lack of communications between peoples and the difficulties attending the exchange of materials. We are entirely in agreement with these eminent men; we all desire to accept the Convention, but with the reservations which I have mentioned.

M. LANKAS (Czecho-Slovakia; speaking in French). — I wish first of all to thank the Chairman for allowing me to announce to the Conference our intention of submitting to it an amendment on the Railways Convention with the object of defining its method of operation.

Before attempting to give a general explanation of this amendment, it will perhaps be useful to review what was done before the war in the matter of the international regime of railways. I shall not touch at length on the Bern Convention; persons more competent than myself have already done so, amongst others the distinguished Director of the Central Office, and M. von der Leyen of the German Delegation, who was one of the authors of this Convention. I would only lay stress on the value of the Convention in making through traffic possible.

We of the new nations which have arisen since the war were able to appreciate the importance of this Convention at a time when—at least temporarily—it did not exist

so far as we are concerned. Since the war the new States have not considered themselves bound by it, but it was then that the work which it had accomplished began to be appreciated. In fact, all the new States have applied it in the form of tariff agreements drawn up between themselves. Thus the Czecho-Slovak Republic at its very creation re-instituted its relations with its neighbours precisely on the basis of the Bern Convention, but unfortunately with certain necessary modifications due to the post-war situation, which in certain respects is unaltered. It is therefore impossible to apply the letter of this Convention, and one of the most important tasks of the Central Office will be to arrange a Conference to revise the Convention and consider certain restrictions which might be applied to it.

The Bern Convention introduced a uniform international obligation,—the single way-bill,—and we must ascertain what improvements might be introduced. These improvements would consist in widening the scope of the Convention to allow of its extension to other matters, particularly to the carriage of passengers and luggage, and to increase the number of States adhering to it. We have heard with pleasure that Spain intends to adhere to the Bern Convention, and this example will certainly be followed by other States.

But the Bern Convention is not enough to regulate international relations in their entirety. There are indeed many cases when for one reason or another there is no single way-bill. It is well known that at the time of the drawing up of the Convention it was deeply regretted that all the States had not found it possible to unify the laws governing internal traffic,—interior jurisdiction. One of the objects to be realised, therefore, would be the unification of the laws, even those governing internal transport, in order that goods sent, even those not included on a single way-bill, might come more or less under the same regulation. Certain States, amongst others France, possess laws for the despatching of goods abroad which are entirely different from those governing the despatch of goods within the country; thus certain difficulties are raised in international traffic regulated by these contracts for separate shipments.

Another sphere in which a definite international regime exists is that of tariffs. I will not enlarge on the subject; I would only refer to a point which to my mind is very important and on which the Conference ought perhaps to express a recommendation. All railway experts are aware that the greatest difficulty which they encounter is the extreme diversity which exists from a formal point of view in the constitution of tariffs. It is, therefore, unnecessary to emphasise the importance of introducing direct rates. It is well known that these afford business men an opportunity of easily calculating the cost of transport, but there is great difficulty in estimating them, on account of the very great diversity of tariffs from a purely formal point of view. The suggestion which we wish to put forward does not in any way infringe the sovereignty of States as regards tariffs; we would desire the Conference to formulate a recommendation to the effect that this question of the unification of tariffs from a formal point of view should be examined. This unification would, moreover, permit the establishment of direct rates to a greater extent than the one actually in force, and would be extremely favourable to the development of international traffic.

There is yet a third domain in which an international regime exists,—that of technical questions. There is no need to emphasise the importance of the Conference on Technical Unity, and I could not state the question better than the Director of the Central Office has done. It is to be hoped that this work may give a still wider scope both from the point of view of the number of States adhering to it and from that of the subjects dealt with.

It is indeed a fact that an international regime in respect of railway questions was already in existence, and the very object of our Conference as well as that of the Convention is to co-operate in the development of international traffic.

Before passing to a short analysis of the Draft Convention itself, may I be allowed to recall in a few words the history of this Convention? It will perhaps be necessary, particularly in the case of those States which did not collaborate in preparing the Convention in its present form, to remember that it is the result of a compromise, and that at first, as was proposed by certain delegations at the Peace Conference, it had a very much wider scope and was of much more importance. The intention at that time was to establish a kind of internationalisation of railways similar to that of

navigable waterways. It was considered that railway traffic was so important that private interests should bow before it. It was thought that certain lines were so important for international traffic that they ought to be reserved for it. Briefly the idea was to internationalise certain main lines. This idea has been abandoned.

The last remains of this idea of internationalisation, which consisted in obliging certain States to carry out certain work, even if not necessary for these States, have now been abandoned, and to-day we find a Convention which has an entirely general scope because it is to be applied all over the world. On this subject we share the opinion of the Italian Delegation in considering that the present form of the Convention on Railways is too general, and in our amendment we suggest certain modifications which would have the effect of defining to a certain extent the obligations to be imposed by the Convention.

I will return to the question of details in Committee; and here I will only remark that, within the sphere of the Railways Convention, we have clearly seen that the question of transport could neither be dealt with nor settled from a world standpoint. There are indeed certain questions which, while remaining international, must yet be treated in a more detailed manner and within a more restricted sphere. In short, where railway questions are concerned, we are compelled to regard the application of principles in a narrower light. In other words, we consider that the General Convention should envisage the conclusion of certain individual conventions of a special character according to their sphere of application, which will be more restricted.

The statement of the Delegate of Brazil would seem to prove precisely the truth of our claim. It is impossible to draw up a world-convention on railways unless general principles are adhered to. A technical and detailed convention, if it is to be of a practical nature, must be limited to certain restricted territorial groups. In my opinion we should introduce certain main principles into the General Convention, we should retain a certain nucleus, and afterwards conclude conventions more limited in scope,—European conventions, American conventions, in short, conventions of a special nature and limited in application. These conventions would be in part concluded between the States themselves.

I should like to turn here to a question which the German Delegate has touched upon,—the question of certain great unions which existed in Europe before the war, and which, while restricted, as their names will show, nevertheless were of much more general application. I refer to the union of the administrative bodies of German railways, which before the war included not only the German administrations, but also the Austrian, Hungarian, Luxemburg, and Netherlands administrations. Unless I am mistaken, it even included a Russian railway, the Warsaw-Vienna railway and the Belgian and Roumanian railways. This union served as an example, as a model, for a still greater union, called the Union of Administrations, which adhered to supplementary conditions,—to uniform regulations. I have no hesitation in saying that this union rendered great service to the development of international traffic. But there can be no doubt that the situation has changed since the war. There can be no doubt that this union will have to be replaced by a still larger one,—a European union. We should like the General Convention to provide a basis, a centre, for the formation of railway unions which, in our opinion, should have certain relations with the League of Nations and its organisations. We hope that association of this kind will arise through the force of circumstances to replace the union of which I have spoken by a more general and more extensive system.

In conclusion, I venture to refer once again to the technical difficulties which railway traffic has encountered since the war, and which—among other things—renders the literal application of the Bern Convention impossible. One of the chief of these difficulties is the great shortage of wagons throughout the whole of Central Europe. I venture to add that this shortage is altogether artificial. The Czecho-Slovak Republic itself has had to suffer much in consequence of it. As I pointed out in the first speech which I had the honour to deliver here, Czecho-Slovakia did all within her power to consolidate her railway traffic immediately after the war, and can assert with pride that her railways are now in a condition almost equal to that before the war. Allow me to say that the Czecho-Slovak Republic has done its utmost to build new wagons and to maintain in working order the wagons of the common stock which worked on

the territory of the former Austro-Hungarian Monarchy. But these efforts have been paralysed by a fact which is not in consonance with common sense as regards traffic, —the failure to carry out the repartition of the rolling-stock of the former Austro-Hungarian Monarchy. This may seem entirely a question of detail, but it is on this question that the restoration of Central European traffic depends. It is absolutely necessary, in the common interest not only of the States which have newly arisen on the territory of the former Austro-Hungarian Monarchy, or which have increased their territories at the expense of this monarchy, but also in the interests of the whole of Europe, that this allocation should take place as soon as possible.

There is a very penetrating remark in the admirable statement of Sir Francis Dent. Sir Francis asserts that this state of affairs is a complete negation of the aims aspired at in the Covenant of the League of Nations (1). This remark is very true. It is essential that the present situation should be remedied, and it is due to the energetic efforts of Sir Francis Dent alone that part of this work has been achieved. But I cannot insist too often on the necessity of arriving at a solution of this question as soon as possible, even though it appears to be entirely a question of detail. It is none the less true that I consider it essential for the re-establishment of the economic equilibrium of traffic in Central Europe and indeed in the whole of Europe.

With these remarks I return to the Convention itself, and I desire to declare that we accept the principles of it, while proposing certain amendments for the purpose of defining more exactly some of its provisions, and also of finding a nucleus for the formation and conclusion of more restricted and special conventions. As I have said, I will enter into details within the Committee itself, and finally, I express the firm hope that we shall prepare a Convention which will contribute very materially to the development of international traffic.

The PRESIDENT (speaking in French). — We thank M. Lankas for his interesting statement. No more speakers have handed in their names, and the general discussion is therefore at an end.

LIST OF MEMBERS OF THE COMMITTEE ON RAILWAYS

I will read to the Conference the list of the members of the Committee on Railways.

<i>Albania</i>	MM. MIDHAT FRASHERI.
<i>British Empire</i>	G. L. COLVIN.
<i>Austria</i>	H. REINHARDT.
<i>Belgium</i>	HANRFZ.
<i>Brazil</i>	BARBOZA CARNEIRO.
<i>Bulgaria</i>	BOCHKOFF.
<i>Chile</i>	HERNAU EDWARDS.
<i>China</i>	M. C. HSU.
<i>Czecho-Slovakia</i>	Dr. LANKAS; Substitute, M. KOLLER.
<i>Denmark</i>	MM. HAARLOW.
<i>Esthonia</i>	Walter ROSENTHAL.
<i>Finland</i>	ROLF THESLEFF.
<i>France</i>	LOISEAU.
<i>Germany</i>	Professor VON DER LEYEN.
<i>Greece</i>	MM. POLITIS.
<i>Guatemala</i>	GALVEZ.
<i>Haiti</i>	Luis Maria SOLER.
<i>Honduras</i>	GALVEZ.
<i>Hungary</i>	WALTHER.
<i>India</i>	Sir LOUIS KERSHAW.
<i>Italy</i>	M. Paolo BIGNAMI; Substitute, M. Girolamo SINIGALIA.

(1) See p. 3.

<i>Japan.</i>	MM. SATAKE.
<i>Latvia.</i>	Charles BLODNEEKS.
<i>Lithuania.</i>	V. SIDZIKAIUSKAS.
<i>Luxemburg</i>	LEFORT.
<i>Netherlands.</i>	KALFF.
<i>Norway</i>	HAVSBERG.
<i>Panama.</i>	E. HAZERA.
<i>Paraguay</i>	VELASQUEZ.
<i>Persia.</i>	Mirza HUSSEIN KHAN ALAI.
<i>Poland.</i>	WIELOVIEYSKI.
<i>Portugal.</i>	A. FREIRE D'ANDRADE.
<i>Roumania.</i>	G. CARACOSTEA.
<i>Serb-Croat-Slovene State.</i> . .	R. M. AVRAMOVITCH.
<i>Spain.</i>	Ramon DE MONTAGUT.
<i>Sweden</i>	Nils AHLBERG.
<i>Switzerland.</i>	CARLIN; Substitute, M. WIRZ.
<i>Uruguay.</i>	Benjamin FERNANDES Y MEDINA.
<i>Venezuela</i>	Dr. Simon PLANAS SUAREZ.

The meeting adjourned at 1.15 p.m.

PART II

DISCUSSION IN COMMITTEE

(SIR FRANCIS DENT IN THE CHAIR)

OF THE

DRAFT CONVENTION

ON THE

INTERNATIONAL REGIME OF RAILWAYS

FIRST MEETING OF THE COMMITTEE ON RAILWAYS

(Friday, April 1st, 1921, at 9.30 a.m.)

CHAIRMAN'S SPEECH — DISCUSSION OF ARTICLE 1 — DISCUSSION OF ARTICLE 2
DISCUSSION OF ARTICLE 3

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

CHAIRMAN'S SPEECH

The CHAIRMAN. — I will not detain you more than two minutes. I consulted a number of delegates yesterday, and found they agreed that it would be desirable for M. Étienne, the Director of the Central Office of International Transport, to attend the meetings of the Committee; I think the Committee will agree.

Some of the articles of the Draft Convention now before us are common to those of other Conventions, and I propose that the Rapporteur and Assistant-Rapporteur be instructed to see that the Drafting Committee make the same changes in these articles as in those of the other Conventions. If you agree, I think we might defer consideration of the Preamble until we have discussed the articles.

I would use the minute I have left to give—what perhaps I am not entitled to do—a word of advice to the Committee. We are here considering a Draft Convention which it is hoped all the States will accept. It is clear, therefore, that it must be wide enough to meet all requirements. It cannot be as tightly drawn as some of the existing Conventions. Let us leave it for existing and future Conventions to be more precise. Railways are so interdependent that I have no doubt that in future they will agree to tighten the terms of their agreements. A coat to cover all must be too large for some.

DISCUSSION OF ARTICLE 1

As discussion of the Preamble is postponed, I propose that we pass to Article 1, which I will read.

Treatment of Goods, Mails and Postal Parcels.

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods, mails and postal parcels, over the railways placed under their sovereignty or authority, more particularly as regards the through transport of goods whenever possible by a single waybill, their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application.

The first amendment to Article 1 is that of the Roumanian Delegation, which simply brings this article into accord with the Transit Convention. I will read this amendment :

Article 1 and following articles : Delete throughout the words *mails and postal parcels*.

M. LANKAS (Czecho-Slovakia; speaking in French). — The Roumanian Delegation desires to omit the words *mails and postal parcels*, as was done in the Transit

Convention. I have to formulate certain reservations with regard to this proposal, and for this purpose I should like to have private conversations with some of the delegations. In the meantime I oppose the deletion of the words.

M. HANREZ (Belgium; speaking in French). — The text adopted here should be in complete harmony with that adopted for the Transit Convention. If the words *mails and postal parcels* are omitted in one place they must also be omitted in other places; any other course would be illogical.

M. LOISEAU (France; speaking in French). — I entirely agree with the view of the Belgian Delegate,—there would be a risk in not keeping in strict accordance texts which deal with the same subject.

M. LANKAS (Czecho-Slovakia; speaking in French). — Allow me to remind you that the question of mails and postal parcels has not yet been finally decided by the Conference (1), only by the Plenary Committee. Any delegation can therefore bring this point up again; I myself intend to do so in plenary meeting.

I would next venture to observe that there is a very great difference between the Convention on Freedom of Transit and the Railways Convention. The latter applies not only to transit, but to all other kinds of traffic,—for instance, import and export traffic between two States. It is therefore possible and even necessary to consider this Convention from a different point of view from the Convention on Freedom of Transit.

M. POLITIS (Greece; speaking in French). — The question, as I understand it, is as follows: If we delete the words *mails and postal parcels* from the Transit Convention we should also delete them from the Railways Convention.

M. LANKAS (Czecho-Slovakia; speaking in French). — I do not share my colleague's view. Even if the words *mails and postal parcels* are deleted from the Transit Convention, there is no absolute need to omit them here as well. The circumstances are quite different. If I remember aright, the Madrid Convention only deals with the transit of mails and postal parcels. I would point out that in the Railways Convention we are dealing not only with transit, but also with import and export traffic, which is a very different matter. This fundamental difference between the two Conventions was very forcibly brought out in the debates.

M. LOISEAU (France; speaking in French). — If I remember aright, the Madrid Convention also applies to traffic other than transit traffic; the objection, therefore, holds good. Mails and postal parcels were reserved to be dealt with by the Madrid Convention. It was for this reason that we deleted the words from the Transit Convention; it is for the same reason, and not because there is a distinction to be made between transit and ordinary traffic, that they ought to be excluded from the Railways Convention as well. Furthermore, I think I am not the only one to hold this opinion.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is true that without railways there would be no postal parcels carried. Nevertheless, having decided in the Transit Committee, on the advice of experts, to delete the offending words, we must be logical. In order to be clear on this point ourselves, we would merely ask the Czecho-Slovak Delegation the reasons for its action. Let M. Lankas tell us his reasons, his misgivings, his fears. We cannot vote yes or no without being given the reasons.

M. LANKAS (Czecho-Slovakia; speaking in French). — My intention was not to lose time, and for that reason I desired the question of mails and postal parcels to be reserved. Indeed, I said that I would explain my views to certain delegations in private conversation.

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, pp. 30-35.

M. LOISEAU (France; speaking in French). — That is the reason for which we have come here,—to explain our views and to come to an understanding.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would beg the Committee to postpone this question; we shall not discuss the whole Convention in a single meeting.

M. LOISEAU (France; speaking in French). — I should hope not.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would beg the Chairman, then, to reserve the question of mails and postal parcels until a little later on.

M. REINHARDT (Austria; speaking in French). — I should like to know whether the Madrid Convention also applies to railway traffic other than traffic in transit. Can any delegate give us authentic information on this point? If that Convention applies to railway transport in general as well as to transit, I do not think that postal parcels can be dealt with in one Convention and not in the other.

M. Mirza HUSSEIN KHAN ALAI (Persia; speaking in French). — I was at Madrid and signed the Conventions. They applied both to transit and to transport by rail, and did not concern transit exclusively.

M. SINIGALIA (Italy; speaking in French). — Besides, mails and postal parcels are not mentioned in the Waterways Convention.

The CHAIRMAN. — In view of the observations of the Persian Delegate, will M. Lankas now agree to the words *mails and postal parcels* being provisionally omitted?

M. LANKAS (Czecho-Slovakia; speaking in French). — I ask that a vote be taken.

The CHAIRMAN. — We will take a vote, then, on the provisional omission of the words *mails and postal parcels*.

M. CARLIN (Switzerland; speaking in French). — I should like to point out that all our decisions here are provisional. I therefore suggest that we should vote on the actual, and not merely provisional, omission of the words. If the Delegate of Czecho-Slovakia does not agree, he can always bring the question up again in Plenary Conference. He has an unquestioned right to do so. Otherwise, I believe our work will be anything but speedy. Indeed, I think that if we continue to discuss the Draft Convention in this way,—if we stop half an hour over every secondary question, we shall never finish. I am therefore very happy to see that a vote is about to be taken. Let me repeat that decisions taken in Committee are always of a provisional nature; they are taken subject to their acceptance by the Conference. I would therefore propose that the vote should be taken on the omission of the words *mails and postal parcels*.

The CHAIRMAN. — Is the Committee content that we should vote on the Roumanian amendment in the form in which it was read? I will put it to the vote.

The Roumanian amendment was adopted by 24 votes to 3.

M. SINIGALIA (Italy; speaking in French). — I will explain briefly the amendments which the Italian Delegation has the honour to propose. We should like a somewhat more positive wording adopted for Articles 1 and 2. Indeed, we said this when we made our statement at the general discussion (1). The States signing the Convention should enter into a rather more positive form of undertaking. Article 1 says :

The High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods, mails and postal parcels, over the railways placed under their sovereignty or authority, more particularly as regards

(1) See p. 10.

the through transport of goods whenever possible by a single waybill, their treatment during the journey, transshipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application.

These are provisions which are usually applied in all international railway relations.

With regard to Article 2, its provisions have already formed the subject of arrangements and conventions between different railways. We can therefore say that there is nothing new in the stipulations provided for in these two articles, and the Italian Delegation thought that it would be a retrogression from present conditions were we to confine ourselves to recognising these principles as highly desirable. For these reasons my Delegation proposes the amendment now before you.

M. RAMON DE MONTAGUT (Spain; speaking in French). — In the general discussion (1) the Spanish Delegation explained the conditions of railway operation in Spain, and therefore, to its great regret, it is unable to accept the wording proposed by the Italian Delegate. The undertaking to put in force immediately the measures which are recommended in Article 1 would involve special conventions with the other European systems, the preparation of which presents legal difficulties for the Governments and economic difficulties for the Companies; the solution of these problems requires time.

The Spanish Delegation is compelled, then, to keep within the limits of Article 1, as worded in the *Green Book*. The Spanish Government, for its part, will do its best to meet the wishes of the Conference as soon as possible by adhering to the Bern Convention.

Mr. G. L. COLVIN (Great Britain). — The British Delegation is more or less in agreement with the Spanish. We think that the expression *agree to adopt* is a little too rigid. It must be remembered that this article applies not only to European railways but also to those of other continents. The article lays down as desirable the adoption of a system of single waybills. Probably that is desirable between different countries of the same continent, but I do not know whether it would be altogether desirable, or even practicable, between railways in different continents—for example between Indian railways and those of Western Europe or South America. In these circumstances I should prefer a less rigid form of words than *agree to adopt*. I suggest the addition of the words *or encourage the adoption of*. The sentence would then read : *The High Contracting Parties agree to adopt, or encourage the adoption of...* I should be glad to know whether the Italian Delegation agrees to this addition.

M. SINIGALIA (Italy; speaking in French). — In the first place, I should like to tell the Spanish Delegate that the proposal of the Italian Delegation is in no way meant to impose the adoption of the provisions of Article 1 on all railways throughout the world.

The Italian Delegation is quite aware that difficulties stand in the way of the general adoption of the single waybill, but it considers that its amendment, which said : *...the High Contracting Parties agree to adopt... all measures which will facilitate the international transport of goods...* would prove acceptable.

I think that no one will disagree with this view. With regard to the second part of the article dealing with the single waybill, I would like to point out that the wording of the Draft disposes of the difficulties which have been raised. The text reads : *more particularly as regards the through transport of goods whenever possible by a single waybill*. The expression *whenever possible* expressly refers to the case in which this single waybill could not be made out.

This is the explanation which I desired to give with regard to the Italian proposal. May I add that I have no objection to the amendment proposed by the British Delegation, so long as that amendment leaves intact the principles laid down in the article?

(1) See p. 17.

M. LANKAS (Czecho-Slovakia; speaking in French). — As you know, the amendment we have proposed (1) has the same object as the Italian amendment. I beg that you will carefully examine our proposal, which is supported by strong reasons. I agree with M. Sinigalia. It appears to me quite natural, when speaking of railways, and an international regime of railways, not merely to express a recommendation to the effect that every effort should be made to facilitate international transport.

M. POLITIS (Greece; speaking in French). — We agree on that point.

M. LANKAS (Czecho-Slovakia; speaking in French). — If ever an undertaking ought to be entered into,—an undertaking to which incidentally, in view of the reservations contained in the article, we should be bound in honour—it should be now, when a Draft Convention on the International Regime of Railways is before us. This seems to me to be so obvious that I am surprised to see the Committee wasting valuable time discussing it. All the States of the world are undoubtedly agreed to undertake to adopt *all measures which will facilitate international transport*. We must admit that the real international traffic, that which concerns the public at large, has met with certain difficulties up to the present. But on the other hand the article which is now before us contains so many reservations that delegations can accept the form *undertake to adopt* without the least anxiety.

I should like to make another small reservation; I should prefer *undertake to adopt measures which will facilitate international transport*, deleting the word *all*.

I do not think the anxiety expressed by the Spanish Delegation is justified. Should this Delegation enter into the undertaking of which I have spoken, this would not imply that its Government was forced to alter the gauge and to take a number of other like measures. Article 1 expressly provides for the transshipment of truckloads when such an operation cannot be avoided. My remarks with regard to the Spanish Delegation also apply to the remarks made by the British Delegation. To sum up, I think that all the States represented can accept this formula : *undertake to adopt measures which will facilitate international transport*.

M. LOISEAU (France; speaking in French). — In spite of the enthusiasm with which the Delegate of the Czecho-Slovak Republic has defended his case, I regret that I cannot share his view. On the contrary, I am of opinion that we should keep the wording as it stands in Article 1, because I think it is difficult to undertake beforehand to adopt measures with the details of which we are unacquainted. All that we can and should do is to show our readiness to encourage and facilitate all possible progress in connection with international passenger and goods traffic. The carrying out of the measures must be left to the railway companies with a view to the conclusion of agreements between them. Lastly, let me once more express my conviction that it is wiser and equally practical to keep to the form which has been criticised.

M. RAMON DE MONTAGUT (Spain; speaking in French). — I support the views expressed by the French Delegate.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think I need only recall the general discussion and the words of our Chairman, Sir Francis Dent, and also the *Green Book* report, to justify my amazement, or at least my surprise, that questions which have to all appearances been settled should now once more be brought up for discussion.

I think two things are being confused,—the principles already laid down in the Transit Convention and those underlying the General Convention on Railways. This question was discussed at length at the Commission of Enquiry in Paris, and it was thought that there would be no need to make this General Convention, which deals with a special subject depending on administrative bodies and on the States themselves, were it not that it was to act merely as a kind of complement to the Conventions on Transit and on Waterways, and, *quâ* complement, that it would be most

(1) For text of Czecho-Slovak amendment see p. 36; footnote.

regrettable for it not to exist. We were thus unanimous in recognising that this general Convention should serve as a framework which would enable the administrations to continue their work, taking into account existing institutions. While on this subject may I read you a few lines of the *Green Book* (1) :

In its pages are contained the elements of the line of action to be followed with regard to railways by the general communications organisation of the League of Nations, and of the new and specialised code gradually to be built up as a result of progressive understanding between States, and of that slow but sure fusion of their *inter se* agreements, which is so eminently desirable. It has not been considered possible to go further.

If therefore we wish to accomplish any useful work, let us keep to what has already been said on this matter, and follow the very sensible advice of our Chairman.

If the proposal of the Delegate of Italy were adopted, it might give rise to difficulties. All the drafts have already been submitted to the various Governments, which have examined them and perhaps already approved them. If we make further extensive modifications, we shall not know where we are. On the other hand, the proposal of the British Delegation to add the words *or encourage the adoption*, would come near to causing us to weaken seriously the original meaning of Article 1 as drafted. Moreover, the scope of application of this article includes what the Italian and British Delegations had in mind when they made their proposals.

I would therefore ask the Committee to keep to the text of Article 1 as it stands. Agreement can surely be reached on this point with the French, Spanish and British Delegations. I understand that the last-mentioned does not propose an amendment to this article; it merely proposes an addition to it, should the Italian amendment be adopted. This would be regrettable; the article would be preferable in its present form.

M. POLITIS (Greece; speaking in French). — I entirely agree with the Italian and Czecho-Slovak Delegations, both for the reasons which they have explained and for another which, in my opinion, is even stronger. It is impossible to conceive of a Convention in which no engagement is undertaken. I have never seen a contract or a convention which was a mere expression of desire. If no more than wishes are expressed, there will be no sanctions; all the articles which follow,—nay, the whole Convention, will be rendered nugatory. Does the Conference desire to make a Convention or does it not? That is another question. In my opinion the Convention should have been planned in a totally different manner, in order to allow of the development of international transport; as it is, we are providing for nothing more than what is already taking place in the railway world.

M. LANKAS (Czecho-Slovakia; speaking in French). — May I reply to the accusation made against us by our Serbian colleague when he said that we ought not to raise a question already settled by the Commission of Enquiry at Paris?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is not an accusation.

M. LANKAS (Czecho-Slovakia; speaking in French). — I should like to point out to the Serbian Delegate that the Czecho-Slovak Delegation took the same attitude in the Paris Commission as to-day; we made a statement on the International Regime of Railways before the War and on what we desired and recommended on the subject. Our present attitude is consistent with that taken up by us and by several other Delegations at the Commission of Enquiry.

Moreover, at the time of the discussion of the Transit Convention, several delegations which had not made any reservations at the Commission of Enquiry at Paris ceased to adhere to what was done at Paris. Having said this, I would like to give my strong support to the Italian proposal, which we will accept as our own, and which I had weakened by deleting the word *all*. I entirely agree with the view of the Greek

(1) See p. 209.

Delegate. I do not see how it is possible to make a Convention which should be limited to saying that certain things appear *desirable*. I do not see how such a method can be adopted in connection with means of transport so important as railways. I am afraid that a Convention of this kind would appear almost ridiculous.

I make all reservations as regards the Convention itself. If this Convention is to contain nothing but recommendations and statements of fact I wonder, on consideration, whether it would not be better to give it an entirely different form.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I have listened today with great interest to the Delegates of Czecho-Slovakia and Greece, as I listened with interest yesterday to the observations of the Italian Delegation. It would be very difficult for Brazil, and probably for nearly all the South American countries, to accede to a Convention which was not drawn up on very general lines. We must take into account the fact that this Convention is to be applied throughout the world; but the regime of the railways of the countries is still too far from uniform to enable all to bind themselves categorically to take certain steps, when these steps depend in the first place on the political situation, in the second on the economic, and finally on the financial situation. In our opinion, then, it would be better to adhere to the scheme proposed in the *Green Book*.

I support the view of the French Delegation, and I think that, in order to satisfy the Greek and Czecho-Slovak Delegations, this Convention might be changed to a series of Recommendations; as a matter of fact it contains nothing but recommendations.

M. POLITIS (Greece; speaking in French). — That is quite true.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — There are some countries which can only accept recommendations, and which cannot undertake to fulfil categorical obligations. Very well; in that case they could promise to take such measures as they may think suitable, but they will not be able to fix any time. They may say : —We will first conclude agreements with our neighbours, and we shall gradually succeed in concluding conventions which will have the same results, but for the moment we cannot undertake binding engagements on the terms proposed by the Italian and Czecho-Slovak Delegations. Speaking candidly, I think it would be preferable to change the Convention into a series of Recommendations.

M. WINIARSKI (Poland; speaking in French). — I will not remind you of the technical and economic reasons which may be adduced in support of the present form. I am very sorry that I do not agree with the Delegate of Italy. I will venture to say that if we substitute the words *undertake to* in the present text, these words will not be in keeping with the tenor of the engagement. An engagement is something definite and rigid, whereas what we are undertaking here is something vague and general. We speak of *facilitating as far as possible...*, of *measures which will facilitate...*, *measures which will allow...* All this is vague. I think that we should either make a Convention with definite engagements, or—and this would be preferable—change the Draft Convention to a Draft Recommendation. I have seen Conventions containing rules of a general kind such as those now proposed to us, but I do not see any objection to supporting the proposal of the Brazilian Delegate.

M. LOISEAU (France; speaking in French). — The statements which the Delegates of Czecho-Slovakia and Greece have made, and the very timely speech of the Brazilian Delegate, appear to me to have brought the discussion into a sphere somewhat wider than that of the text of Article 1. It has been said that we are discussing a convention; a convention implies engagements, and you refuse to subscribe to engagements properly so-called, in accordance with the proposal of the Italian Delegation.

Before sitting on this Committee I was struck, as were many of you, by the strange

terms in which the text of the *Green Book* is couched. The first three articles are nothing but mere recommendations; it is only in Articles 4 and 5 that we reach the real subject of the Convention, and these will probably be sharply discussed. I did not give expression to this thought for two reasons. In the first place I wished to be respectful as far as possible to the contents of the *Green Book*, and in the second place I desire the best possible use to be made of the Committee's time. I recently spent forty-eight hours on the Waterways Committee, and I witnessed the delays which are inevitable when an agreement has not been reached as regards the point of departure. Having confessed these scruples, I should like to say that if there is really an element in this Committee prepared to admit that it would be much better to abandon the idea of the Convention and only to make recommendations, not only do I see no objection to this, but I am ready to subscribe to a proposal to this effect.

M. SINIGALIA (Italy; speaking in French). — I ask pardon for having raised this discussion, which I did not think would occasion much loss of time. It has been said that great anxiety was caused by the engagements which would be entered into here without their exact purport being known. I would point out that the engagement which I proposed only concerns Article 1, and I do not see anything in this article which can give rise to the least anxiety. According to my wording of Article 1 the High Contracting Parties would be required to take measures to facilitate international traffic. I think no country can refuse that. The second part of the article deals with the single way-bill; that is the most important question, but though I can understand there being some hesitation on the part of countries which have not signed the Bern Convention, I am astonished that objections should be raised by the representatives of States which have acceded to this Convention. If definite engagements have been undertaken, in virtue of the Bern Convention, to adopt a single waybill, I cannot understand why there should be any hesitation to make this way-bill universal. In any case that has nothing to do with my proposal; we are all fully aware that the single way-bill is not an obligation imposed on the consignor, but a facility offered to him by the railway. He is simply told, "If you desire a single way-bill, take it; if not, leave it." I think therefore that all opposition should disappear even as regards the single way-bill.

The other questions are *treatment of goods during the journey, transhipment when this operation is unavoidable*. We have here an absolute fact. When transhipment cannot be avoided, measures must be taken for it to be done in the best way. Finally we have the question of the establishment of tariffs and the conditions of their application, but we shall discuss that later. If we do not accept the proposal of the British Delegation, which goes far to allay the fears which might be felt as regards undertaking engagements, I do not see any obstacle to our retaining what is laid down in Article 1 in the *Green Book*. All that we need is something—I will not make a definite proposal, and I merely draw the attention of the meeting to this point—something which would give our text the appearance of a real convention, instead of leaving it in the vague form of a mere expression of desire.

M. LANKAS (Czecho-Slovakia; speaking in French). — I support the Italian Delegate's view as regards the question of principle, but as regards the form which shall be given to our Convention I share the view of the French Delegate, who rightly averred that the most important point of the Convention is not in Article 1 but in Article 4. This article, by its use of the future tense, contains certain obligations. I think it would be premature for us to take a decision now on the question as to what form we should give to our work. I think that we should continue to discuss the other articles and decide at the end as to the form to be given to our Convention. I should also like to second the Italian proposal, which is not so far-reaching as ours, since we wished to use the word *undertake*. I do think that in the first article at least we should use some word which would give it the appearance of a convention. Perhaps the Drafting Committee could find a word to meet our wishes.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I never spoke of an accusation (1). I simply referred to what was said and done in accordance with the *Green Book*. I will read the passage (2) :

As stated above, the Draft Convention on the International Regime of Railways was adopted unanimously, without reservation upon any point.

I believe that is clear, and I consider that it means much. As regards the fundamental question raised here I understand the Italian Delegate has withdrawn his proposal.

M. SINIGALIA (Italy; speaking in French). — No, we have not.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — You did withdraw it, and you merely asked to add something which would give this Convention the character of a general convention. In this matter I support the view of the French and Brazilian Delegates. We shall see at the end what form to give our text. I think that the delegates who raised this question will probably regret having done so, as they thereby run the risk of reducing this General Convention to the level of a mere recommendation. For this reason I repeat : Never ask too much for fear of obtaining too little. We must keep to the Draft in its present form and to the advice of our Chairman. It has also been said that this Convention claimed nothing more than to be a framework into which all the Conventions to be concluded in future should fit. As we have sufficiently discussed Article 1, I venture to ask the Chairman to put the amendment to the vote.

M. LOISEAU (France; speaking in French). — One word only; I am in complete agreement with M. Lankas and M. Avramovitch as to continuing the discussion and reserving until later the question of the form to be given to our decision.

M. HANREZ (Belgium; speaking in French). — I think that the questions submitted to us are so obscure and complex that we cannot possibly bind ourselves to-day in any way as regards the conclusions at which we arrive. This Convention is a guide which points out to us the line we should take in examining the questions before us. We may possibly be asked why we have deviated from accepted principles. But no administrative body could decide questions of such importance at a moment's notice. I ask then that Article 1 should be retained as drafted. If, however, we wish to change this Draft Convention into Recommendations, I am quite prepared to do so later; but as regards undertaking an engagement, there can be no question of that for the time being.

Mr. G. L. COLVIN (Great Britain). — As there seems to be a considerable body of opinion in favour of the wording of the article as it stands in the *Green Book*, I am quite ready to withdraw my amendment in favour of the original text. I might point out that although the wording at the beginning of Articles 1, 2 and 3 is of a somewhat general nature, the words at the beginning of Article 4 provide for the establishment of special Conventions which are intended to lay down precisely the necessary measures to be taken to carry out the principles of Articles 1, 2 and 3.

The CHAIRMAN. — As no one else asks to speak, I will put to the vote the first part of the Italian amendment.

The amendment was rejected by 23 votes to 4.

M. HANREZ (Belgium; speaking in French). — Then we keep the article unchanged?

M. RAMON DE MONTAGUT (Spain; speaking in French). — That is to say that we keep the *Green Book* text?

(1) See p. 32.

(2) See p. 210, last paragraph.

The CHAIRMAN. — The first part of Article 1 remains unchanged at present. There is a German amendment which I will read :

Add after the words *whenever possible* the words *by a single transport code*; the text would thus read : *whenever possible by a single transport code and a single way-bill*.

M. von der LEYEN (Germany; speaking in French). — Allow me to explain in a few words the reasons for our proposal. In order to facilitate international goods traffic, it is absolutely necessary that the transport code should be the same for all railways taking part in this traffic. The single way-bill is only a document marking the existence of this uniform code. For this reason the way-bill, under the terms of Annex 27 of the Bern Convention, contains the following clause :

You shall receive goods... under the conditions laid down in the International Convention...

that is to say, the regime of the uniform code of the Convention. In order to assure the same treatment for traffic which is not subject to the Bern Convention, uniform laws concerning transport are essential. I think that the Czecho-Slovak amendment to Article 1 is to the same effect (1). This amendment contains the words *whenever possible by a single way-bill, subject to the same obligations* (uniform consignment note). That is the purport of the German amendment, and if you prefer the Czecho-Slovak amendment I am prepared to support it.

M. LANKAS (Czecho-Slovakia; speaking in French). — If we admit the principle, it will be well to leave the Drafting Committee to choose the most suitable and useful form. The question is whether we are to indicate clearly that we recognise as desirable that all States in a position to do so should adhere to the Bern Convention, that the scope of this Convention should be widened as regards the number of States adhering to it, and that the greatest possible use should be made of single way-bills, subject to the same obligations, that is to say to a uniform consignment note. That would be a most desirable and even necessary declaration, because what the text at present states as regards through traffic—*whenever possible by a single way-bill*—does not indicate with such clearness that what is meant is a *uniform consignment note and a single transport obligation*.

Mr. G. L. COLVIN (Great Britain). — I am afraid I must oppose this amendment. I have again to point out what is sometimes forgotten, namely, that this particular Convention applies not only to Europe but throughout the whole world. To say that you must have a single transport code all over the world simply means that a large number of countries will not sign the Convention. I think it is unnecessary to add the words suggested by the German Delegation. As regards the Czecho-Slovak amendment, I have not yet had time to consider it, and frankly, I do not quite know what it means.

M. LANKAS (Czecho-Slovakia; speaking in French). — May I explain to the British Delegate that the Czecho-Slovak amendment states exactly the same thing as the German amendment? It is understood that through traffic is carried on with single way-bills. It would seem desirable that special Conventions should be concluded establishing a single transport contract. But conventions of this kind may very likely be concluded even in America, and the adherents of the Bern Convention may become

(1) The text of the Czecho-Slovak amendment reads as follows :

“Delete this Article and substitute the following wording :

Treatment of Goods, Mails, and Postal Parcels.

“Without prejudice to the provisions of the Convention on Freedom of Transit, the participating States undertake to adopt, on the railways placed under their sovereignty or authority, all measures which will facilitate international transport of goods, mails and postal parcels, more particularly as regards the through transport of goods, whenever possible by a single waybill, subject to the same obligation (uniform consignment note), their treatment during the journey, transshipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application.”

more numerous. If the British Delegate does not wish to refer to the Bern Convention because it is at present not capable of worldwide application, I think he should feel the same scruple as regards the mention of through traffic. At present it is no longer possible to carry it on throughout the world. I think that the wording... *whenever possible by a single way-bill...* may easily be accepted for all States.

M. CARACOSTEA (Roumania; speaking in French). — I am an old railway man, and during the long time that I have spent in Transylvania I have had to make Conventions and carry on through traffic with Germany. I should like to be told the meaning of the term *single transport code*. The Bern Convention regulates every kind of traffic, and I cannot, therefore, understand these words, and I am sure that many of my colleagues will not understand them either. We have a single waybill in virtue of the Convention of Bern; I understand that. But, I repeat, I do not understand a *single transport code*. Does this mean something which is not referred to in the Bern Convention? If so, I am not sure whether I should vote for this amendment.

M. von der LEYEN (Germany; speaking in French). — The words *single transport code* are perhaps somewhat difficult to explain. When we speak of a single way-bill it is understood that if railways are concerned which are not subject to the Bern Convention, they must have come to an agreement as to the code governing their traffic. I think that the text of the Czecho-Slovak amendment explains our intention better than does our own, and I therefore support it.

M. CARACOSTEA (Roumania; speaking in French). — We shall examine it.

M. LANKAS (Czecho-Slovakia; speaking in French). — As the German Delegate supports our proposal, allow me to explain our amendment in a few words, although the German Delegate himself has already explained it quite clearly. We should like traffic to be carried on as far as possible with single way-bills, and we should like international traffic to be regulated by international conventions, that is to say, as far as Europe is concerned, by the Bern Convention. This means that we wish the greatest possible number of States to accede to this Convention; as regards Europe, for example, it would be desirable for all the countries in which the Convention of Bern has not been applied to ask to become parties to it. Traffic with single way-bills would thus become possible, and would henceforth be subject only to a single obligation. I think that the Roumanian Delegate might see his way to support our view.

M. CARACOSTEA (Roumania; speaking in French). — According to what the Czecho-Slovak Delegate has said, all the countries which have not yet acceded to the Bern Convention must do so, in order that traffic should be carried on in the same conditions for all. But as regards countries which do adhere to the Bern Convention there is nothing to add. If this is what is intended by the Czecho-Slovak amendment, I will support it. This question does not concern those countries of Europe which are parties to the Bern Convention. If it refers to States on the other side of the Atlantic, to which the Bern Convention does not apply, it is understood that traffic should be regulated on a basis of equality for all, as the Bern Convention stipulates in regard to Europe.

M. LANKAS (Czecho-Slovakia; speaking in French). — I wished to make it clear that the part which we have put between brackets does not apply to the text itself, but explains my meaning.

The CHAIRMAN. — Does no one else wish to speak? I understand that the German Delegate supports the Czecho-Slovak amendment. If the Committee agrees, we will vote on this amendment, which, let me remind you, consists in introducing into the article the words *subject to the same obligation*. We will vote only on the principle of the amendment, and will leave to the Drafting Committee the task of deciding the final text.

The amendment was adopted by 20 votes to 3.

M. SINIGALIA (Italy; speaking in French). — The words... *uniform consignment note* are to be omitted?

M. LANKAS (Czecho-Slovakia; speaking in French). — That was merely inserted as a guide.

The CHAIRMAN. — The Italian Delegation proposes to draft the end of Article 1 as follows : *the form of establishment of common tariffs and the method of their application.*

M. SINIGALIA (Italy; speaking in French). — I should like to say at once that this is merely an amendment of form. We have no wish to alarm the Committee. We must state definitely what should be done. The words *le mode d'établissement de tarifs* (establishment of tariffs) seems to me too vague. The Italian Delegation considers that it would be better to say *the form of establishment of common tariffs*. It is a question of the form which a common tariff should have,—its requirements, the classification of goods, the scale of rates according to countries, and so on. We must aim at giving a single form to common tariffs. The Italian Delegation also proposes to omit the words *their rates* and to allude only to the method of application. It considers that tariff rates should not be the subject of negotiations as regards the establishment of tariffs. The rates are generally those of the tariff scales in force within each individual country. We cannot then make recommendations on the subject of rates, as each country has a sovereign right to deal with this question independently.

M. HANREZ (Belgium; speaking in French). — I agree with the Italian Delegation.

M. LANKAS (Czecho-Slovakia; speaking in French). — I agree with the Italian proposal as regards the substitution of the words *forme d'établissement* (*form of establishment*) for the words *mode d'établissement* (establishment), and the omission of the words *their rates*. As regards the word *common*, allow me to remind you of what I said yesterday. Through tariff rates are formed by the amalgamation of local tariffs, and as a result of the great diversity of local tariffs, considerable difficulties arise in establishing common tariffs. This diversity is much greater than is required by present conditions. The differences are so great that, in order to establish common tariffs, Commissions must sit for several months in order to find a basis for the amalgamation of tariffs. Great progress would be made if, in Europe and the other continents, the various administrations would make efforts to introduce more similarity in their tariffs. Amalgamation would thus be rendered easier. It is for this reason that I begged the Italian Delegation not to press for the introduction of the word *common*. I think it is most desirable that, even as regards the establishment of local tariffs, the needs of international traffic should be considered. We should therefore express a recommendation to the effect that States should make efforts in the direction to which I have referred.

The CHAIRMAN. — It would be well, I think, to ascertain the opinion of Colonel Étienne on this question.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — I confess that I was a little surprised, on reading the end of Article 1, to see that the Convention dealt with tariff rates. The Bern Convention did not venture to touch upon this complex and difficult question. As you know, this Convention issued, as it were, from the regulations of a number of countries,—much less numerous, it is true, than those represented here. Allow me to read the provisions of two articles which appear in the Bern Convention. In Article 4, which deals with the validity of tariff regulations, we find that :

As regards international transport traffic, the Convention regarding the conditions for common tariffs of railways associations or unions, and also those of the tariffs of each individual railway, shall be valid in so far as they are not contrary to the Convention; otherwise they shall be considered as null and void.

As regards the basis upon which tariff rates are to be calculated, Article 11 reads as follows :

Transport rates shall be calculated in accordance with the tariffs legally in force and duly published.

This is reserved for the different contracting States. It then reads :

Any private agreement, having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally available to all under the same terms and conditions.

The Bern Convention thus leaves considerable latitude on this point and does not deal with tariff rates.

M. WALTER (Hungary; speaking in French). — I think that M. Lankas has made a slight mistake. The Italian Delegation does not require local tariffs to be made uniform. When speaking of direct transport and single waybills, it seems reasonable to avoid transshipment at frontier stations. The amendment of the Italian Delegation aims at establishing the form of direct tariffs, that is to say, of common tariffs. It is for this reason that I support the proposal.

M. SINIGALIA (Italy; speaking in French). — I will reply in a few words to M. Lankas' remarks on the addition of the word *common*, which we proposed. I fully share the Czecho-Slovak view. It would be most desirable for local and international tariffs to be made uniform. I am the more ready to say this because in Italy we are in the course of carrying out the operation to which he referred just now. I confine myself to speaking of common tariffs because we have before us a Convention which refers to the international and not to the internal regime of railways. Though I am prepared to satisfy M. Lankas' request, I do not think I can refer in this Conference to matters relating to the internal regulations of each individual country. International traffic, which is the subject of our discussion, is regulated only by common tariffs. I know that in certain cases the local tariff of several States should be applied to international transport; that does not imply the necessity of instituting uniform tariffs.

M. HANREZ (Belgium; speaking in French). — I support the Italian Delegate's view. I think, as he does, that there can be no question here of discussing the establishment of local tariffs. In order to avoid any doubt, it would be better, instead of *establishment of common tariffs*, to say *establishment of international tariffs*.

M. LANKAS (Czecho-Slovakia; speaking in French). — Perhaps I expressed myself badly. It is quite true that when we speak of international traffic, we are thinking particularly of common tariffs, but it is also true that a large part of international traffic is based on local tariffs.

M. HANREZ (Belgium; speaking in French). — Not always.

M. LANKAS (Czecho-Slovakia; speaking in French). — International traffic may be facilitated in two ways,—by the establishment of favourable common tariffs and by the unification, as far as possible, of local tariffs. Those delegates who represent railways will certainly share my view that the diverse character of local tariffs forms the greatest obstacle to the establishment of through tariffs. Before the War, Austria was on the point of making her local tariffs uniform with those of Germany in order to facilitate the establishment of through tariffs with that country. It was from this point of view that we spoke not of the establishment of common tariffs, but of the establishment of tariffs generally. In my view—and I hope it will be shared by the Committee—international traffic should be facilitated to the utmost possible extent by the unification of local tariffs; but I do not think there is any need to state this in Article 1. It might form the subject of a recommendation on the part of the Committee. If the

Committee accepts my view, we might simply keep the words *the establishment of tariffs*. The word *tariffs* applies both to common and international tariffs. We should adopt the text proposed by the Italian Delegation by omitting the words *their rates*.

M. WINIARSKI (Poland; speaking in French). — For the reasons stated by M. Sinigalia, I support the proposal to substitute for the word *common* the word *international*.

The CHAIRMAN. — Does the Italian Delegate agree to substitute the word *international* for the word *common*? It has the advantage of being easier to express in English.

M. SINIGALIA (Italy; speaking in French). — I accept the alteration, but I should like to make one more observation. I share M. Lankas' view. I am convinced that the standardisation of tariffs, both international and local, would offer great advantages, both for internal and international traffic, but I do not see—perhaps I have not expressed my idea clearly on this point—how it is possible, in an international Convention, to issue recommendations with regard to internal traffic. If the meeting thinks that it can do so, I shall not press for the addition of the word *common* or *international*. This, in my view, is a question of form, of regulation, but I have no reason to oppose M. Lankas' proposal.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I support the proposal of M. Sinigalia and that of M. Hanrez, subject, however, to the omission of the words *their rates*.

M. LANKAS (Czecho-Slovakia; speaking in French). — I agree to the addition of the word *international* to the word *tariffs*, but I will return to my proposal later.

The CHAIRMAN. — I put to the vote Article 1, the last part of which reads as follows :

...the establishment of international tariffs, and the method of their application.

The article was adopted as amended.

DISCUSSION OF ARTICLE 2

I will open the discussion on Article 2, which reads as follows :—

Treatment of Passengers.

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage over the lines placed under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage.

The Italian Delegation has submitted an amendment.

M. SINIGALIA (Italy; speaking in French). — The amendment which the Italian Delegation proposed can no longer be supported; the question with which it dealt has already been decided in connection with Article 1 (1).

(1) The text of the Italian amendment reads as follows :—

“Alter the beginning of Article 2 as follows :—

“Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties undertake to adopt all measures which will facilitate the international transport of passengers and luggage over the lines...”

The CHAIRMAN. — The Czecho-Slovak Delegation has proposed an amendment to Article 2.

M. LANKAS (Czecho-Slovakia; speaking in French). — In our amendment we are making a suggestion similar to that which we made to Article 1; the object of the amendment is to provide for the formation of conventions regulating passenger and luggage traffic. This convention already exists as far as Europe is concerned, but it has not been put into force. We ask that the words *subject to the same obligation* be added to Article 2.

M. SINIGALIA (Italy; speaking in French). — For the same reasons which were so ably stated by M. Lankas, I support the proposal to add to Article 2, after the words *through booking facilities*, the words *subject to the same obligation*.

The CHAIRMAN. — Would the Committee like to hear M. Etienne's views on this subject?

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I think it would be most useful.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — At the last plenary meeting I gave certain information on the subject of the draft International Convention on the transport of passengers and luggage which was prepared at Bern. I asked the Chairman to allow me to speak, in order to point out that in Article 2, which we are now discussing, there is no question of registration tickets for the international booking of luggage. The Draft Convention, however, includes in Article 2, a whole series of instructions on the luggage registration ticket. This consists of three distinct documents,—in the first place a counterfoil, to be retained in the luggage office, then a similar sheet for the luggage official, and, finally, a luggage ticket for the passenger. The wording of this luggage ticket would be extremely simple; it would consist merely of a carbon copy. When the counterfoil is written, the two other sheets are made out automatically. I think it would be well to mention the international luggage registration ticket, as we have done for the through waybill, because it is obvious that if a passenger wishes to travel with a through ticket, it would also be better for him to have a through luggage registration ticket, in order to avoid having to look after his luggage during the journey.

M. HANREZ (Belgium; speaking in French). — In order to meet the view stated by M. Étienne, would it not be well to add to this article the following words :—

In particular, such measures should comprise the establishment of services with through tickets and through registration of luggage...

The CHAIRMAN. — I propose that the meeting vote on M. Lankas' amendment, which consists of the introduction of the words *subject to the same obligation* at the end of Article 2.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am willing to support the proposal which has been made, but I should like to ask if these words *subject to the same obligation* are quite clear. What we mean is :—subject to the same obligation in every country.

M. LANKAS (Czecho-Slovakia; speaking in French). — In a certain number of countries.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In the countries adhering to the Convention?

M. LANKAS (Czecho-Slovakia; speaking in French). — As far as possible. I think that your idea would be expressed by the addition of the words *as far as possible*.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Please note that I do not object to the proposal, but I think it must be made more precise, and I should like the Drafting Committee to take note of my remark. Moreover, I should like the words *the establishment of services with through booking facilities and through luggage registration tickets* to be used.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — I think that the wording of the last part should be different from what you propose. We cannot at once speak of luggage registration tickets, because the text reads *as far as possible without change of carriage*. This is for passengers; the proposed addition could only come after the words *subject to the same obligation*.

M. SINIGALIA (Italy; speaking in French). — This is a pure question of drafting, with which the Drafting Committee could deal.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We might vote on the principle, and we should see later how the article is to be drafted.

M. LANKAS (Czecho-Slovakia; speaking in French). — The ideas which should be expressed are as follows :—*The establishment of services with through tickets, as far as possible without change of carriage, and with through luggage registration tickets*. That would be the first idea. The second idea would be *subject as far as possible to the same obligations*.

M. Walter ROSENTHAL (Esthonia). — This is only a question of drafting. The English text, for instance, contains the words *through booking facilities*, which can refer both to persons and luggage. I should like to see the Bern Convention mentioned in the final text.

M. COLVIN (Great Britain). — I personally cannot allow that all the countries which sign our Convention should be compelled to adhere to the Bern Convention; this Convention only applies to European countries, and there are certain countries outside Europe which could not accept all its provisions.

M. Walter ROSENTHAL (Esthonia). — I am quite aware that the Bern Convention only applies to Europe, but since it has been in existence, its results have been so excellent that it would be most desirable for similar conventions to be concluded in all the countries of the world. My idea is not to compel other countries to adhere to the Bern Convention, but only to show how desirable it would be that similar conventions should be concluded.

M. LANKAS (Czecho-Slovakia; speaking in French). — I think that the Delegate of Esthonia did not intend to make explicit mention of the Bern Convention, but only to allude to it. Moreover, there is no Bern Convention with regard to passenger and luggage traffic. It is only a recommendation. The Esthonian Delegate only wished to refer to it by using the words *subject as far as possible to the same obligation*.

M. Walter ROSENTHAL (Esthonia). — I accept that interpretation.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — In order to obviate any misunderstanding, I should like to point out that, in present conditions, the Bern Convention could not be applied throughout the world. It is designed solely with a view to rail traffic. This also includes train ferries or ferry-boats which act as extensions of the railways systems. This is the legal fiction of the continuity of railways. Thus traffic between the Scandinavian countries and Germany is regulated by the Bern Convention. The same applies to that carried

on on Lake Constance between Switzerland and Germany, and in Italy across the Straits of Messina. In all these cases there is no breaking of bulk or of continuity. For Great Britain the question is somewhat different, for with the exception of the ferry-boats used during the war no international traffic within the meaning of the Bern Convention is possible between the Continent and England. On the other hand, the Convention applied to the Siberian railways, and waybills were made out as far as Vladivostock.

I wish to be quite clear on this point. It may be said that the Bern Convention will be applied in spirit, but not otherwise; at the present time it cannot be applied to Europe as a whole, and still less to Asia and other parts of the world.

The CHAIRMAN. — I will read Article 2 as amended in accordance with the discussion which has taken place :

Treatment of Passengers.

The High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage under conditions of speed and comfort corresponding to the importance of each train service. In particular such measures should comprise the establishment of services with through booking facilities and without change of carriage, as well as through luggage registration tickets, subject as far as possible to the same obligation.

I put the article to the vote.

Article 2 was unanimously adopted.

DISCUSSION OF ARTICLE 3

The CHAIRMAN. — I will read Article 3.

Rolling-Stock.

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

The Spanish Delegation has proposed an amendment to this article. I will read it :
Add the following words at the end of the article :

Without this implying any obligation to alter the tracks of two neighbouring countries when these tracks are of essentially different types.

M. Ramon DE MONTAGUT (Spain; speaking in French). — The motive for our amendment is the fact that the gauge of the Spanish railways exceeds that of the ordinary continental lines by 23 centimetres. The Spanish Government cannot permit any compromise on this subject; the necessary reductions would involve enormous expenditure, and would occasion very great difficulties inherent in the work necessary to allow the circulation in Spain of foreign rolling-stock, with the exception of that of Portugal. The head of our Delegation explained this to you at length in his speech (1).

M. ROLF THESLEFF (Finland; speaking in French). — I think it is absolutely necessary that the Spanish amendment should be adopted. When I say this I am thinking of the railways of my own country, the gauge of which is wider than that of most other countries. Attempts have been made to calculate the cost of altering it, and the sum estimated was a very considerable one. Moreover, we consider that from an economic point of view it would perhaps be better for us to retain our present gauge, as the Russian railways have the same gauge. This similarity facilitates traffic between the two countries.

(1) See p. 17.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I entirely agree with the amendment proposed by the Spanish Delegation.

M. Walter ROSENTHAL (Esthonia). — Speaking on behalf of Esthonia and Latvia, I am very happy to support the Spanish amendment.

M. LOISEAU (France; speaking in French). — I think that the proposal of the representatives of Spain, Portugal, Esthonia and Latvia is fully justified. I personally am quite ready to support it. I should like to propose a slight change in the wording, in order to make the sentence a little more precise. Instead of the words *without this implying any obligation to alter the tracks of two neighbouring countries when these tracks are of essentially different types*, I think that we might say :—

Without this implying any obligation upon two neighbouring countries to modify the essential characteristics of their tracks when they are different.

Mr. COLVIN (Great Britain). — I agree with what has been said, but I should like something to be added referring to the loading-gauge, because the tracks of two countries might be the same, but their loading-gauge might be totally different, and sometimes it might be as expensive to alter the loading-gauge as the gauge.

M. LANKAS (Czecho-Slovakia; speaking in French). — I wish to state that I support the proposal of the Spanish Delegation. In order to hasten the progress of our work I withdraw the Czecho-Slovak amendment to Article 3. I will merely venture to make the following suggestion. Would it not be desirable to substitute the title *Interchange of rolling-stock* for *rolling-stock*? But we will discuss that question later.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think this is not merely a question of rolling-stock, but also of technical measures to be taken. Perhaps it would be better to say *Interchange of rolling-stock and technical provisions*. That title would include everything.

M. HANREZ (Belgium; speaking in French). — A request was made that the loading-gauge should be added, and this must be included also.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — There is not only the loading-gauge; there are other important questions, such as weight of locomotives...

M. Ramon DE MONTAGUT (Spain; speaking in French). — The limit of load per axle.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think a general Convention should not include all that,—loading gauge, weight of locomotive and so on. The result would be an obligation to alter the whole superstructure in order to facilitate international communications. I do not think we can ask such a thing. It seems to me that it would be enough to say *including technical provisions*.

M. HAARLOV (Denmark; speaking in French). — We might add... *as far as possible*.

M. SINIGALIA (Italy; speaking in French). — I should like to point out that no undertaking is entered into in Article 3 any more than in the other articles. In these circumstances, I think that the misgivings felt by the Delegate of the Serb-Croat-Slovene State are dispelled...

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I have no misgivings.

M. SINIGALIA (Italy; speaking in French). — In my opinion, all the details which have been asked for are unnecessary. We are expressing desires. We shall see if it

is possible to meet them. If it is not, they will not be met. Of course if certain rolling-stock cannot pass over certain lines on account of its loading-gauge, no one will call for the loading-gauge to be altered. The title should therefore be defined more precisely. The technical provisions laid down in this article refer to the interchange of rolling-stock and to nothing else. I think that the article can therefore retain its present form, with the addition proposed by the Spanish Delegation, which I recognise as necessary, and also with the change in the title.

M. Walter ROSENTHAL (Esthonia). — I suggest that we should employ a more comprehensive term for the title of this article and use the words *technical provisions*.

M. AVRAMOVITCH (Serb-Croat-Slovene Delegation; speaking in French). — I agree with the Italian Delegation, since it is only a case of facilitating the reciprocal use and interchange of rolling-stock. Although it is desirable that further provisions of a technical nature should be introduced, in particular as regards braking and the unification and manufacture of rolling-stock, there is no question of that in this General Convention. I wish to state, therefore, that I am satisfied with the explanation that has been given.

The CHAIRMAN. — I will ask the permission of the Committee to say a few words, for in my capacity as a technical railway man I have made a close study of the question. I agree with the French and Spanish Delegations. If we insert a provision in this Convention dealing with changes of gauge, we incur the risk of allowing it to be thought that railway companies may be required to make any technical alterations of lesser importance. Everyone admits that an obligation of this kind cannot be imposed in respect of the exchange of rolling-stock. I would therefore suggest that we refer the question to a sub-committee to find a wording which would satisfy the Spanish Delegation and those delegations which support its proposal. The interests of all would thus be safeguarded and misunderstandings would be avoided.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I quite agree with you, but I should like to make a suggestion which would perhaps satisfy the Spanish and Portuguese Delegations. Even if we do not include a clause of this nature in the General Convention, could we not insert it in the Final Protocol? We should thus avoid the misinterpretation feared by the Spanish and Portuguese Delegations.

M. Ramon DE MONTAGUT (Spain; speaking in French). — Our amendment does not allude to the gauge. It reads as follows:—*without this implying any obligation to alter the tracks of two neighbouring countries when these tracks are of essentially different types*. This wording includes loading-gauge, wheel-base and everything.

M. LANKAS (Czecho-Slovakia; speaking in French). — Contrary to the view of the Esthonian Delegate, it would be better to make the title of the article clear by using a term such as *exchange of rolling-stock*. We must remember that the measures to be taken to facilitate the reciprocal use and interchange of rolling-stock will not only be provisions of a technical nature, but will also involve conventions between States.

The CHAIRMAN. — I suggest that we form a Sub-Committee composed of the Delegates of Spain, France, the Serb-Croat-Slovene State, Great Britain, Italy and Esthonia; I would also ask M. Lankas if he would object to the postponement of the discussion of this proposal until this Sub-Committee has supplied us with a text.

M. LANKAS (Czecho-Slovakia; speaking in French). — Of course, the Sub-Committee will use as a basis the discussion which has taken place.

The CHAIRMAN. — It will consider the suggestions made by the representative of Czecho-Slovakia.

The meeting adjourned at 12.50 p.m.

SECOND MEETING OF THE COMMITTEE ON RAILWAYS

(Saturday, April 2nd, 1924, at 10 a.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 3 — NEW ARTICLE PROPOSED BY THE ITALIAN
DELEGATION — DISCUSSION OF ARTICLE 4

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLE 3

The CHAIRMAN. — I will read the new Article 3.

Interchange of Rolling Stock.

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

It is clearly understood that the above-mentioned measures do not include those which would involve alterations in the essential characteristics of a railway system or rolling-stock.

M. Loiseau, Rapporteur of the Sub-Committee, will now address the meeting.

M. LOISEAU (France, Rapporteur; speaking in French). — The Committee is aware of the circumstances in which this Sub-Committee was appointed to submit a definitive text for Article 3. The Spanish Delegate had proposed to add to the text of the *Green Book* a provision worded as follows : *without this implying any obligation to alter the tracks of two neighbouring countries when these tracks are of essentially different types*. It was very properly pointed out that the word *obligation* was out of place, for no formal undertaking on the part of anyone is laid down in the body of the article; and as soon as there is no undertaking there is no obligation either. We therefore joined in the endeavour to find a text which would exclude the word *obligation*, and the word at which we arrived is that which has been read by the Chairman. We believed that this text would meet the wishes of Spain, which we also those of various other countries. On the other hand, we did not see fit to alter the title of Article 3 and confined ourselves to inserting the words *Interchange of* before the words *Rolling-stock*. I do not anticipate any difficulty with regard to this wording.

M. KALFF (Netherlands; speaking in French). — I beg to observe that the second part of Article 3, as now worded, gives the impression that it is not desirable to take measures entailing alteration in essential characteristics. I do not think that is what was intended. Such measures are most desirable, but they are exceedingly difficult to apply. The present difficulty arises from the fact that Spain, and several other countries, see in the first part of the article an obligation which, in my opinion, it does not contain. Article 3 no more involves an obligation for Spain to narrow her railway gauge than it does for France to widen hers. If Spain signs the Convention and does not alter her gauge, she cannot be blamed by anyone for so doing. I should prefer, then, to keep the text of Article 3 as it stands in the *Green Book*, and leave what has been put in the second part of the article for the Final Protocol.

The CHAIRMAN. — Does the Netherlands Delegate feel very strongly on this point? The principle here expressed has been approved by the Committee, and this article is to be the point of departure for various special Conventions.

M. KALFF (Netherlands; speaking in French). — I do not press the point.

M. EDWARDS (Chile; speaking in French). — The Chilean Delegation accepts the text adopted by the Sub-Committee for Article 3 of the Draft Convention under discussion; I will, however, take this opportunity of giving you a rapid review of the railway situation in Chile, which will assist you to understand why in South America it is not yet possible—and perhaps never will be possible—to arrive at a unified railway system, and consequently at interchange of rolling-stock.

Chile, which is a narrow strip of country 4,300 kilometres in length and with an average width of only 170 kilometres, has the greatest length of railway line in proportion to its area of any country in South America. Chile has one kilometre of line to every 90 square kilometres, the average corresponding figure for South America as a whole being only one per 200. Chile was the first country to build a railway in the Southern Hemisphere, at a period, if I may say so, when railways were still in their infancy. It will thus be readily understood why we have a fine collection of samples of every kind of track. The Southern system of the country has 60 centimetre, one metre and 1·680 metre tracks. On the Northern system the variety is still greater, with tracks of 76·2 centimetres, one metre, 1·067 metres, 1·270 metres and 1·435 metres. On the Southern system the gauge which predominates is 1·680 metres, and on the Northern system one metre. This is explained by the fact that the Southern system is built in a valley, the Northern in extremely hilly country. This is also the reason why a maximum gauge of one metre has had to be adopted for all international railways connecting Chile with her neighbours. The Antofagasta-Oruro-La Paz Railway, the oldest railway in South America, has a gauge of 0·762 metres; it crosses the Cordillera de Los Andes at a great height above sea-level. The Arica-La Paz Railway, which was built throughout its length of 460 kilometres at the expense of the Chilean Government, crosses the Andes at a height of 4,280 metres above sea-level; it includes a 32 kilometre section of rack railway. The railway from Los Andes to Mendoza in the Argentine crosses the Andes at an altitude of 3,189 metres. You will understand that we are prohibited by these difficulties of a topographical nature from employing a gauge wider than one metre; to do so would involve prohibitive expense.

I should like to thank the Committee for the kindness which it has manifested in affording me this hearing.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — Mr. Chairman, could the amendment be read once again?

M. LOISEAU (France; speaking in French). — This is the amendment :

It is clearly understood that the above-mentioned measures do not include those which involve alterations in the essential characteristics of a railway system or rolling-stock.

The CHAIRMAN. — I will put to the vote Article 3 as amended by the Sub-Committee, and I should like to thank both the Sub-Committee and M. Loiseau for the work which they have so kindly undertaken.

The article was adopted, 23 voting for.

NEW ARTICLE PROPOSED BY THE ITALIAN DELEGATION

The CHAIRMAN. — The Italian Delegate will address the meeting on the subject of a new article which he is proposing. The text reads as follows :

The High Contracting Parties undertake, in connection with the construction or electrification of railways in the neighbourhood of a frontier, which are of interest to international

traffic, to adopt as far as possible all measures which would allow of an improved operation of these lines, including the possible concession of electrical power by one country to another.

M. SINIGALIA (Italy; speaking in French). — It was decided by the Italian Delegation to lay before you the text of a new article, upon which many words need not, I think, be wasted. As you are aware, the question of electric traction is becoming of great and increasing importance; I need not dwell upon the advantages of this method of traction,—they are well known. We consider that, particularly on mountain lines, it would be most desirable—of course, within the limits of possibility—to transform the method of traction from steam to electricity.

The necessary amount of power must, of course, be available, and one country may possess a large store of such power, whilst a neighbouring country may possess a much smaller measure. We are therefore of opinion that it would be a great advantage, with a view to the improvement of lines of communication, if the countries possessing such power, after having satisfied all their own requirements, consented to cede their surplus electrical power to other countries lacking such resources. In this way these latter countries would be enabled to obtain power to electrify their frontier lines.

This does not, of course, imply any absolute engagement; it is only a recommendation put into words by the Italian Delegation, and I imagine that no objections will be raised against it in this gathering.

M. VELASQUEZ (Paraguay; speaking in French). — On the subject of the addition proposed by the Italian Delegation, I would venture to observe that the word *undertake* has once more been used. I consider that there is even more reason on this occasion than there was on the preceding one to substitute the words *consider desirable*, as was done before. With this reservation, I agree to the proposal made by the Italian Delegation.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — The Brazilian Delegation accepts the suggestion of the Delegate of Paraguay.

M. HANREZ (Belgium; speaking in French). — I consider that this motion is inopportune here; the question of the electrification of international lines goes beyond our competence. Even if the Conference were prepared to adopt the Italian Delegate's proposal, it is highly probable that the military authorities in the various countries would oppose it on strategical grounds; the view expressed by us here might be contrary to that which they held. I consider it preferable, therefore, not to adopt this motion.

M. KALFF (Netherlands; speaking in French). — To my mind the Italian amendment is outside the scope of the Convention now under discussion; we could not possibly accept it. We shall begin by conceding electricity and end by conceding coal!

M. CARLIN (Switzerland; speaking in French). — I support the view expressed by the Belgian Delegate. Even in the weakened form proposed by the Delegate of Paraguay,—*consider desirable* instead of *undertake*—the Italian amendment could not be accepted by the Swiss Delegation. As has been pointed out by the Netherlands Delegate, the question is an altogether special one and is outside the scope of our Convention. It appears to me that the circumstances are of such an exceptional nature that each case should only be dealt with by means of special agreements between the two or three countries which may be concerned. I do not appreciate any the less the aspect of the Italian amendment which brings into prominence that feeling of unity by which the various peoples of the world should be bound together,—that unity which we are summoned here to promote, but, in the circumstances, I think it better not to include this article in the Convention.

The CHAIRMAN. — Does the Italian Delegate accept the alteration proposed by the Delegates of Brazil and Paraguay?

M. SINIGALIA (Italy; speaking in French). — I do, in view of the tone of the discussion which has taken place; although I am sorry that this alteration has been made in the amendment, I will not oppose it in any way. I should like to add further that the Italian proposal does not contain anything liable to interfere with the use of electrical power by the countries which possess it; it would be a friendly concession made subject to conditions to be laid down by the two countries concerned, and only where there is a surplus of electrical power, and when all the requirements of the owning country have been satisfied.

I will add a remark to the observation made which was prompted by misgivings on military grounds. Fears such as this apply not to the question of electrical power alone, but to any form of operation on railway systems, whether steam traction or electric traction. I therefore fail to understand the objection. Besides, the Convention contains all desirable safe-guards for national security. The Italian Delegation intends to propose the inclusion in this Convention of an article similar to that appearing in the other conventions, and which actually deals with the right of countries to take the measures which they believe to be essential to their national security. The point raised by the Belgian Delegate arises not only in connection with the transformation of methods of traction, but also in connection with every other question concerning means of communication. It is not the method of traction which imperils the safety of a country, but the facilities for communication themselves.

I agree to the substitution for the word *undertake* of the words *recognise as highly desirable*.

The CHAIRMAN. — I will put the new article to the vote with the alteration put forward by the Delegation of Paraguay, namely, the substitution for the word *undertake* of the words *recognise as highly desirable*. The alteration brings this new article into accord with the earlier articles which have already been voted.

M. VELASQUEZ (Paraguay; speaking in French). — I should like this vote to be regarded merely as a provisional vote and not as a final one.

The CHAIRMAN. — No decision of the Committee is final; every text adopted here has to be submitted to the plenary Conference.

M. VELASQUEZ (Paraguay; speaking in French). — I will explain my meaning. I thought that the first vote would relate to the original text containing the modification proposed by the Delegation of Paraguay, and that after this vote a final one would be taken on the text as it would then have been decided by the Committee.

The CHAIRMAN. — As the Italian Delegation has accepted your modification, nothing remains to be submitted to the Committee except the text thus modified.

M. HANREZ (Belgium; speaking in French). — May I remind the Chairman that I proposed to omit this new article altogether? Is it not on this proposal that the Committee should be asked to vote first of all?

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — Before the vote is taken, I would ask leave of the Committee to submit a slight addition to the text, which may perhaps obtain the support of some of our colleagues. The following is the text which I propose :

The High Contracting Parties *consider desirable*, in connection with the construction or electrification of railways in the neighbourhood of a frontier which are of interest to international traffic, to adopt as far as possible, *and without prejudice to the interests of industry and of internal traffic in the country in which the electrical power is produced*, all measures which would allow of an improved operation of these lines, including the possible concession of electrical power by one country to another.

M. SINIGALIA (Italy; speaking in French). — I am most grateful to the Brazilian Delegate for proposing this addition to my text, and am most happy to accept it. As I have already said, it is in complete accord with the spirit of the Italian proposal.

I see no objection whatever to this article being referred to a sub-committee with a view to improving the wording and giving satisfaction to the various views which have been expressed. I must say, however, that I consider it needless to adopt such a procedure; the text as completed by M. Barboza Carneiro seems to me clear enough.

M. REINHARDT (Austria; speaking in French). — The amendment of the Italian Delegation on the subject of the electrification of railways concerns a question of considerable importance. Although the problem has not yet assumed very large proportions, it has to be recognised that its importance is increasing daily, by reason of the necessity under which many countries find themselves of substituting electric for steam traction.

Will the Committee allow me to give an example which will illustrate the wide bearing of the question? Before the war, the railways of the Austrian Empire extended for a length of about 20,000 kilometres, and the cost of the fuel necessary for traction over the system amounted to about 55 million kronen. To-day the length of the railways is no more than 4,500 kilometres—that is to say, a quarter of their former length, and traction—upon which, moreover expenditure, is limited on account of the lack of coal and stock, and of other difficulties to which I referred in the Report which I had the honour to present to the Conference—traction, I repeat, involves an expenditure of 2,000 million kronen for fuel. Thus, on a railway system reduced to a quarter of its original extent, and in return for a very limited volume of traffic, Austria is spending forty times as much.

The reason for the change is a very simple one. Formerly, Austria possessed coal-mines on which she drew to provide traction on her railways to the extent of 84 % of the total needs. Whatever additional coal was necessary was imported from Upper Silesia or from England. To-day the mines which we possess are of minor importance, and are only capable of providing 12 % of our total requirements in coal. We are obliged to rely on foreign sources for 88 %. As we have to pay for coal in foreign currency, the loss sustained by us on the exchange, due to the depreciation of our own currency, may be estimated at 1,850 million kronen out of 2,000 million spent by us on fuel.

This is a typical example, and the Committee will understand why the electrification of railways represents a question of vital interest for Austria; it is natural that the latter should wish to transform the method of traction on her railways by making a gradually increasing use of those of her waterways which are capable of supplying sufficient hydro-electrical power. The utilisation of hydraulic power represents a problem so complex and of such wide bearing that it would be dangerous to endeavour to cope with it in a Convention on the International Regime of Railways.

I should like also to state my conviction that there will be no sort of difficulty, should the occasion arise, of carrying out the suggestion of the Italian Delegation at some point on the Austro-Italian frontier; but it appears to me out of the question to include in the Convention on the International Regime of Railways—whether in connection with Article 3 or some other article—a clause dealing with the important question of the utilisation of hydraulic power.

M. CARLIN (Switzerland; speaking in French). — I recognise the conciliatory spirit which led our Brazilian colleague to suggest an amendment to the Italian proposal. I am myself animated by the same desire for conciliation, but I regret that I cannot accept the text proposed by the Brazilian Delegation; it does nothing to remove the substantial objections which, since the outset of the discussion, have been levelled against the new article. I realise the significance of the article from the standpoint of international unity, but, even viewed from that aspect, it is too narrow; it should be extended to coal, as we have to consider not only electric traction but steam traction. If the matter is looked at from this standpoint, why not admit that countries possessing coal should undertake to cede some of it to countries which have none?

I merely wish to draw the Committee's attention to the importance possessed by this article. Questions are involved which far exceed the scope of this Convention, and it would therefore be better, in order to obviate any misunderstanding, to reject the article altogether. I put this as a formal motion.

The CHAIRMAN. — I think that the proper course is to vote on the question whether the new article, with the amendment proposed by the Brazilian Delegation and accepted by the Italian Delegation, should be included in the Convention or not. I will read the text once more :

The High Contracting Parties consider desirable in connection with the construction or electrification of railways in the neighbourhood of a frontier, which are of interest to international traffic, to adopt as far as possible, and without prejudice to the interests of industry and of internal traffic in the country in which the electrical power is produced, all measures which would allow of an improved operation of these lines, including the possible concession of electrical power by one country to another.

The new article was rejected by 16 votes to 6.

DISCUSSION OF ARTICLE 4

The CHAIRMAN. — We will pass to Article 4, which reads as follows :—

Special Conventions.

In the absence of relevant existing conventions, special conventions shall provide for the application of the principles enunciated in the preceding articles. These conventions shall include as far as possible provisions applicable to combined transport by rail and water, including sea journeys. They shall in particular contain stipulations expressly forbidding the concession of facilities or the establishment of tariffs, the adoption or application of which, as regards passengers subjects of any one of the High Contracting Parties, or goods, mails or postal parcels, coming from or proceeding to any one of the High Contracting Parties, over the same throughout route, in the same direction, and in the same conditions, would depend upon the nationality of passengers, upon the ownership or commercial origin of goods, mails or postal parcels or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. This stipulation, however, must not be construed as either preventing the establishment of local tariffs on a different basis from import and export tariffs, or as affecting in any way the question of combined rail and sea tariffs.

The aforementioned conventions shall also provide that transport rates be calculated in accordance with the tariffs legally in force and duly published, and that any private agreement having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

If the Committee agrees, we could take the Italian amendment first. The British amendment (1) is first in order, but as this amendment and the Czecho-

(1) The text of the British amendments to Articles 4 and 5 is as follows :—

ARTICLE 4

“Omit this article and substitute the following :—

Special Agreements.

“In the absence of relevant existing conventions, special conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2 and 3.”

ARTICLE 5

“Omit this article and substitute the following :—

Railway Tariffs and Facilities.

“In the case of nationals of the Participating States or traffic to or from their territories, the railway tariffs fixed, or the facilities granted, shall not depend in any way on the nationality of

Slovak amendment (1) are of the same nature, it would be desirable to discuss them together.

Is there any objection?

I declare the discussion open on the amendment proposed by the Italian Delegation.

M. SINIGALIA (Italy; speaking in French). — The Italian Delegation has no alteration of substance to propose to Article 4. We only desire to render more precise the text of the end of the first paragraph, which deals with the possible establishment of local tariffs differing from import and export tariffs. From the various discussions which have taken place on the subject, and from the Commentary (2), the fact has been elicited that every country should have the right to establish different tariffs for its internal traffic,—tariffs differing not only from import and export tariffs, but also from transit tariffs. Every tariff system involves several classes of tariffs,—internal, import, export and transit. We consider the article incomplete without some additional precision with regard to transit tariffs. We therefore ask that for the words *local tariffs on a different basis...* there should be substituted the words *tariffs on a different basis for internal, import, export or transit traffic...*

M. HANREZ (Belgium; speaking in French). — Like the Italian Delegation, I should like to add a few words to this article. I ask that at the beginning, after the words *In the absence of relevant existing conventions, special conventions shall provide for...* the following words should be added : *as far as possible*.

Secondly, at the end of the first paragraph, after the words *This stipulation, however, must not be considered as either preventing...* I propose the addition of the words *the existence and establishment...*

M. LANKAS (Czecho-Slovakia; speaking in French). — The British and Czecho-Slovak amendments go much further than the Italian amendment,—which, by the way, I support. The British and Czecho-Slovak Delegations propose to make a special article with regard to tariffs, and to transfer the passage relating to special conventions to another article. Surely we ought to discuss first in order the Italian amendment which, incidentally, is in accord with the Czecho-Slovak and British amendments. The Belgian Delegate is referring to Article 4 in its original form, whereas the Czecho-Slovak and British amendments provide for a special article on the question of tariffs.

With regard to the Italian proposal, I accept it.

passengers or considerations of nationality in the ownership, origin, starting-point or destination of the goods or traffic, or on the flag or ownership of the vessels which have been, or are to be employed, either before or after their transport by rail. This stipulation does not affect the establishment of local railway tariffs on a different basis from railway tariffs on imports or exports, or of combined rail and sea tariffs.

“Transport charges shall be calculated in accordance with the tariffs legally in force and duly published, and any private agreement having as its object the granting of rebates to one or more consignors is expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally available to all under the same terms and conditions.”

(1) The following is the text of the Czecho-Slovak amendment to Article 4.

ARTICLE 4

“Omit this article and substitute the following :—

Transport Tariffs and Facilities.

“The concession of transport facilities or the establishment of tariffs, as also their adoption and application as regards passengers subjects of any one of the Contracting States, or goods coming from or proceeding to any one of the Contracting States, over the same throughout route, in the same direction, and in the same conditions must not depend upon the nationality of passengers upon the ownership or commercial origin of goods or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. Transport tariffs shall be calculated in accordance with the tariffs legally in force and duly published; and any private agreement having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

This stipulation does not prevent the establishment of different import, export or local tariffs, nor does it affect the question of combined rail and sea tariffs.

(2) See p. 210.

M. LOISEAU (France; speaking in French). — I am very ready to support the amendment put in by the Italian Delegation. I will only propose a slight alteration to the form of the text, in regard to which, by the way, I am in agreement with my colleague. Instead of saying *tarifs différents selon les trafics intérieurs d'importation...* (*tariffs on a different basis for internal, import... traffic...*), the French of which is a little doubtful, could we not say—the idea is the same—*tarifs différents selon qu'il s'agit du trafic intérieur, d'importation, d'exportation ou de transit* (*different tariffs for internal, import, export or transit traffic*).

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As the British proposal is the one furthest from the text of the Draft, I ask that it should be discussed first; we will then consider the proposals which differ less. I believe that in this way we shall progress more quickly. With regard to the substance of the question, I am fully in agreement with the Italian proposal as amended by the French Delegation. We can then examine the Czecho-Slovak proposal.

The CHAIRMAN. — I suggested that the Italian proposal should be taken first because, after going through it, I was convinced that, as it is only in the direction of defining the tariffs in question more explicitly, there would be no objection on the part of the Committee. I gather that there is no objection to the principle of the Italian amendment, and, having regard to what has been said by various delegates, the wording can safely be left to the Drafting Committee. If that is so, we may now proceed with the amendments of the British and Czecho-Slovak Delegations.

Mr. COLVIN (Great Britain). — In view of the fact that the British amendments to Articles 4 and 5 are mutually interdependent, it will, I think, be more convenient if I deal with them at one and the same time.

I may say at once that we have not sought in these two amendments to import any new principle into the Convention; all that we have attempted to do is to define with greater precision the principles laid down in the existing text. If you will refer to Articles 4 and 5 as they appear in the *Green Book*, you will see that it is proposed to establish special conventions which are to include, not only the principles advocated in Articles 1, 2 and 3, which principles are limited in their application because there are certain States by which, for geographical reasons, they cannot all be brought into force,—but also the principles contained in Article 4, which is of general application for all States.

Under these circumstances it appears to the British Delegation that it would be better to deal with the measures necessary to carry out the principles contained in Articles 1, 2 and 3 by a series of special Conventions between the regional groups of States to which these principles are applicable, and to leave in the main Railway Convention the general principle contained in Article 4. To re-affirm this particular principle in each special Convention would in no way add to its strength and therefore, in our opinion, would only be a useless repetition. But it is of course understood that there shall be nothing in the special Conventions which can in any way conflict with the general principle laid down in the main Convention.

Turning now to the new Article 4 as proposed by the British Delegation, I do not think this requires any detailed explanation. It will be observed that, in connection with the proposed special Conventions, we have omitted any reference to the question of combined transport by rail and water, including sea journeys, because, in our opinion, it is doubtful whether such questions are properly within the scope of a Railway Convention, particularly in view of the fact that combined rail and sea tariffs are specifically excluded from this Convention.

As regards the new Article 5 proposed by the British Delegation, although we have made some changes in the wording as given in the *Green Book*, our object in so doing has not been to alter the principles there given, but only to define them with what we believe to be greater clearness. According to the wording we are suggesting, I may point out that there is nothing to forbid variations of rates in accordance with variations in traffic conditions or regularity of service, or on account of considerations of commercial competition between different routes. Railways will be left as free to

follow out the ordinary principles of commercial rate-making in the case of international traffic, as they will be in the case of local traffic; all that they are asked is not to vary international traffic rates for purely political purposes.

The CHAIRMAN. — I consider it essential that the Committee should decide whether it desires Articles 4 and 5 to be remodelled in this way, and, if so, whether a shorter article entitled *Special Conventions* should be placed first in order, as in the British amendment, or second, as in the Czecho-Slovak amendment. This constitutes an essential difference, for according to the Czecho-Slovak amendment, one article more is brought within the purview of the article entitled *Special Conventions*. It is mainly a question of the general framing of the article; we can discuss the wording afterwards.

M. LANKAS (Czecho-Slovakia; speaking in French). — As the Chairman has pointed out, there is a difference between our proposals and the proposal of the British Delegation. We should like to begin with the article which the British proposal calls Article 5, and then let the provision which deals with special Conventions follow as a separate article. It appears to me more logical to speak of special Conventions in a separate article, which would refer to Articles 1, 2 and 3 and to the new Article 4.

With regard to the wording, I would observe that we have simply kept to the original *Green Book* text, which would appear to be adequate, and have only modified it in the direction suggested by the Italian Delegation, namely, in such a way as to make it clear that the various States will have full liberty to establish import and export tariffs on a different basis one from the other.

I accept, then, the Italian amendment as improved by the French Delegation. I would also venture to ask the Committee to examine whether the *Green Book* text of Article 4 could not be retained; it is not very different from the rest of the British text, and I think that the more reasonable course would be to keep it.

M. CARACOSTEA (Roumania; speaking in French). — The Czecho-Slovak amendment is most suitable here. It meets the desires expressed in the Italian amendment and in the other amendments; I therefore support it heartily, and would appeal to the Committee to adopt it as it stands. What purpose will be served by discussing another text? I would beg the Chairman to agree to put it to the vote.

Mr. COLVIN (Great Britain). — Should the *Green Book* text be retained, I would ask the Committee to consider what might happen in the following circumstances. Suppose a State, which I will call A, carries on international traffic with two States B and C, situated on its boundaries. Traffic with each of these States passes over different routes, but both these routes are of much the same length, and in respect of operating conditions are very similar. What is there to prevent State A from quoting much more favourable rates on the route used by State B than on that used by State C? Great Britain has no particular concern in such a question; I raise it in the interests of justice, particularly towards some of the smaller States.

M. LOISEAU (France; speaking in French). — However favourable my opinion of the Czecho-Slovak amendment may be, I do not go so far as to assert, as does the Roumanian Delegate, that it should be adopted without discussion. I prefer, for the moment, to support the British amendment, which, in my opinion, has the very great advantage of singling out from Article 4 of the *Green Book*, which deals with somewhat dissimilar subjects, a clear and distinct idea, embodied in a succinct phrase, which I will read : *In the absence of relevant existing conventions, special conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2 and 3.*

I consider it quite natural to separate this clause, and thus meet the wishes of the British Delegation with regard to the point.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would inform M. Loiseau that we are doing the same thing,—we also have singled out the idea, and to even a greater

degree. There is a misunderstanding; the Czecho-Slovak amendment isolates the provision still more, seeing that it places it in an altogether independent article.

M. LOISEAU (France; speaking in French). — On this point I concur in the observations of the Czecho-Slovak Delegate, but some text must be taken as a basis for discussion. Shall we take the *Green Book*, the British amendment or the Czecho-Slovak amendment? We cannot enter upon the discussion until we are clear on this point.

M. LANKAS (Czecho-Slovakia; speaking in French). — The misunderstanding arose from my saying that we were taking the *Green Book* text; but we *are* taking it, whilst at the same time making a separate article out of this provision.

Mr. COLVIN (Great Britain). — We really do not much care in what order the articles are put. If the Committee would prefer to change over the order, the British Delegation will have on objection.

M. LANKAS (Czecho-Slovakia; speaking in French). — It must not be forgotten that if two distinct articles are made out of Article 4, the present Article 5 of the Draft will, of course, have to be omitted as no longer necessary.

M. SINIGALIA (Italy; speaking in French). — I agree with the proposal to divide Article 4 into two parts, and if the British Delegation does not press its proposal, I think the new article formed of the first sentence of Article 4 of the Draft might well be put second. I therefore readily support the Czecho-Slovak proposal; I consider it necessary for the special Conventions referred to here to include not only the proposals or undertakings covered by the preceding articles, but also those coming under Article 4.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — May I draw the attention of the Committee to the signal difference which exists and which has been emphasised by the Italian Delegate. If his proposal were accepted, the new Article 5 would refer not only to Articles 1, 2 and 3, but also to Article 4.

Whilst accepting the principle of division as proposed by the British and Czecho-Slovak Delegations, we should nevertheless prefer the order proposed by the latter; this would bring all Conventions under the terms of the new Article 5. It is for this reason that I would ask the Committee to express itself in favour of the Czecho-Slovak proposal.

M. EDWARDS (Chile). — The Chilean Delegation accepts in principle Articles 4 and 5 as proposed by the British Delegation, but we should require the wording to be clearer. We suggest that Article 5 of the British amendment should serve for Article 4, and that Article 4 of the British amendment should serve for Article 5, worded as follows :

In the absence of relevant existing conventions, special conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2, 3 and 4.

These conventions shall include as far as possible provisions applicable to combined transport by rail and water.

The CHAIRMAN. — The opinion of the Committee appears to be that the order advocated in the Czecho-Slovak amendment is the best. Article 4 of the Czecho-Slovak amendment is Article 5 of the British amendment.

Does anyone wish to speak on Article 4 of the Czecho-Slovak amendment and Article 5 of the British amendment?

M. POLITIS (Greece; speaking in French). — The Greek Delegation accepts the British proposal. It proposes to substitute for the words *over the same throughout route, in the same direction* in the first paragraph of Article 4 (*Green Book* text) the words *...over equivalent routes and in the same operating conditions...*

M. LANKAS (Czecho-Slovakia; speaking in French). — I consider that the question is now sufficiently clear and that a vote could be taken.

M. SINIGALIA (Italy; speaking in French). — We agree to the division as proposed by the Czecho-Slovak Delegation.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — I am fully prepared to accept Article 5 as proposed by the British Delegate, but I would ask his leave to make a slight addition to it. After the words *either before or after their transport by rail* I suggest that the following sentence should be inserted :

This provision may be inapplicable when the owners or charterers of the vessels employed before or after the transport by rail establish differential freight scales.

The text would continue as follows : *It is also formally understood that this stipulation will not affect either the establishment of different local tariffs for import, export or transit traffic, nor the question of combined rail and sea tariffs...*

The text of this article plainly conveys the idea of the supplementing of one means of transport by another. The railway carries on by land the function of the vessel. It is laid down in the article that the tariffs for this part of the journey should in no wise depend *either on the nationality of passengers or considerations of nationality in the ownership, commercial origin, starting-point or destination of the goods or traffic or on the flag or ownership of the vessels which have been or are to be employed before or after their transport by rail.*

What we require is reciprocal treatment. A definite obligation is laid down in the article. It might be said that an obligation of this nature would be more suitable in a Convention on maritime traffic. Unfortunately, there is no question for the moment of making a Convention of this kind. I do not know that one will be made. It would appear to me, then, that we should protect the interests of those parties who are now entering into an undertaking and who possess railways but not vessels.

M. AHLBERG (Sweden; speaking in French). — There is an important difference between the British and Czecho-Slovak texts. In the first of these, the words from the *Green Book* : *over the same throughout route, in the same direction and in the same conditions* do not appear as they do in the Czecho-Slovak amendment. I presented an amendment to the British amendment, in order to reinstate these words (1). As the Czecho-Slovak amendment has been submitted, it appears to me that the Committee might adopt it, since it supplies the better wording here.

M. LANKAS (Czecho-Slovakia; speaking in French). — I am happy to observe that the British Delegation accepts our formula,—at least, that is what I gather. This being so, and as the question would now appear to be sufficiently clear, the Committee might proceed to vote.

M. COLVIN (Great Britain). — I am sorry to have to disillusion M. Lankas. I do not accept his amendment in its entirety, but only the change in the order of the articles. I drew the attention of the Committee particularly to one question, and I wonder whether, in view of the importance of that question, it would not be preferable to refer the article to a sub-committee.

There is a possibility of the Swedish amendment re-acting in a rather dangerous manner. According to the British amendment, any tariff variations based on considerations of nationality are prohibited on all routes used by international traffic. According to the Swedish amendment such variation is prohibited only if three

(1) The Swedish amendment reads as follows :

Amendment to the British amendment.

The wording proposed by the British Delegation no doubt expresses more clearly than the *Green Book* the principles to be followed with regard to the establishment of tariffs; nevertheless, it omits some very important words which in our opinion it is essential to retain. We therefore propose to amplify the British amendment as follows :

After the words *or facilities granted* insert the words *over the same throughout route, in the same direction and in the same conditions, shall not depend...*

conditions are fulfilled; the same throughout route is stipulated, the transport must take place in the same direction and the traffic conditions must be exactly similar. Thus, if one of these conditions were not fulfilled,—if traffic conditions, for instance, were not the same, tariffs could offer variations based exclusively on considerations of nationality.

Turning now to the text of the British amendment, we see that tariffs for international traffic over all routes, in any direction and in any conditions are not to depend in any way on considerations of nationality, although variation is admitted if it is based on any other grounds. It would therefore appear unnecessary to add the words proposed by the Swedish Delegation, the text of the British amendment covering not only the special conditions now under consideration, but also any other conditions.

The question which forms the subject of the amendment proposed by the Brazilian Delegation is at present under examination by a Sub-Committee which has yet to present its report, but if the Committee so desires, it can obtain information immediately from the Chairman of this Sub-Committee, who is present at the meeting now.

The CHAIRMAN. — The Committee will doubtless desire to hear the Chairman of the Sub-Committee which was set up by the Plenary Transit Committee, with a view to the study of the proposal made before that Committee by the Brazilian representative (1), and which is similar to the proposal which has just been made at this meeting.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I am not a member of this Committee, but if the Committee would care to hear me, I could explain that the Brazilian Delegation has raised, not only in connection with the Railways Convention, but also in connection with the Transit (2) and Waterways Convention, the general question of whether a Contracting State is bound to give the advantages of these Conventions to a State which differentiates inequitably against its commerce. It was recognised at the time of the discussion of the Transit Convention that this raised a very serious question of principle, and the matter was referred to a Sub-Committee, of which I was made Chairman. This Sub-Committee met yesterday and heard at length the explanations of the Brazilian Delegation. We came to the conclusion that it would not be possible to deal with so big a question in the Convention we are discussing at Barcelona, because the whole question of the equitable treatment of commerce is a matter for another technical organisation of the League,—namely, the Economic and Financial Organisation.

It was decided that the matter should be referred to in the General Report on the Transit Convention, and that a request should be made to the Conference to recommend the Council of the League to direct the Economic Section, in consultation with the Advisory and Technical Committee on Communications and Transit, to study the whole question of whether it is possible and desirable that Contracting States should be authorised to deny the benefits of one Convention in order to enforce observance of the terms of another. Of course, it will be entirely for the Conference to decide whether it adopts such a recommendation. I only take the opportunity of mentioning this here in order that you may see,—as I know my friend, M. Barboza Carneiro will realise,—that what he has now moved comes well within the scope of the investigations of the Sub-Committee. Possibly he will not be inclined after this explanation,—with which, I may say, the Brazilian Delegation is entirely in accord,—to press this particular amendment.

I would thank the Chairman for giving me the opportunity to make this explanation, although I am not a member of this Committee.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I should like in the first place to thank Sir Hubert Llewellyn Smith for the lucid manner in which he has explained this matter before the Committee; we are fortunate in that he has put us in

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, pp. 53, 183 and 191.

(2) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 58.

possession of the facts as regards what passed in the Sub-Committee which was appointed to deal with the Brazilian amendment to Article 2 of the Transit Convention. I may observe, however, that the task of our Committee consists in preparing a framework to serve as a model for special conventions which will probably be concluded between various groups of countries. In this skeleton Convention we said expressly that there must not be included in these special Conventions any clause which would detract from facilities accorded for transport; whilst it is further stated that transport tariffs must not in any way depend on the nationality of passengers or considerations of nationality in the ownership, commercial origin, starting-point or destination of the goods or traffic, or on the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. It is stated, then, in a most precise manner, that nothing shall be laid down in these special Conventions which would be contrary to this principle.

It may happen that certain States are disposed to grant these facilities, but they will find it impossible to do so in view of the restrictive measures proposed by us. They may say: We wish to grant every kind of facility on our railways; we will not practise any tariff differentiation. But we possess no vessels, and we are the victims of differential measures which do enormous damage to our commercial relations.

It seemed to me that the text which I proposed was a flexible one, and would therefore prove acceptable. It allowed States the possibility of introducing a restriction if they considered it necessary; for my part, I do not think we ought to impose on these States the obligation of introducing such a restriction. It was for this reason that I said: *This provision may be inapplicable when the owners or charterers or the vessels employed before or after the transport by rail establish differential freight scales.* The expression *may be inapplicable* appears to me to be sufficiently elastic and to leave a sufficient margin to allow of every contingency. I do not press the point; but I would ask the Chairman whether he will not consult the Committee as to the advisability of referring this amendment, not to the Sub-Committee which is examining the Brazilian amendment to the Transit Convention,—which has a much more general scope,—but to a sub-committee which would examine the amendments to Article 4 as a whole, and would consider the possibility of modifying this article in the sense which I have indicated.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Both this discussion and the explanations which have been given us by Sir Hubert Llewellyn Smith have been most useful. I was much struck by the arguments of the Brazilian Delegate. Would it be fair to impose in respect of railway transport certain strict obligations from which other methods of transport are exempt? There are States which in order to penetrate into certain ports would go as far as to carry out transport free. We have here a most important question of some gravity.

There is another point which I should like to emphasise. Both here and at the Commission of Enquiry at Paris it has often been maintained that railways ought never to serve as weapons of economic warfare. I fail to understand this,—I said as much in the general discussion. If it be permissible to pursue an economic policy by the aid of navigation, why should it not be so where railways are concerned? Countries which sacrifice everything for their railways are justified in requiring that the fact should be taken into consideration. Some stormy debates took place at the Commission of Enquiry at Paris, and it was as a compromise that the *Green Book* text was unanimously adopted. Nevertheless, may I be allowed to remind the Committee of what is said in the *Green Book* (1):

In the course of discussion prominence was given to the connection between general railway practice on the one hand, and the economic and railway policy of different States on the other, without, however, affecting the points agreed to for inclusion in the body of the Convention.

The summary of these discussions may be of interest to the Conference, particularly inasmuch as they reveal certain points of view corresponding...

(1) See p. 210.

It is stated further (1) :

The Commission recognised that the question was not one which for the present could be useful in a General Convention put forward for immediate adoption.

I lay stress on the words *put forward for immediate adoption*.

It was persuaded that the different opinions expressed would tend gradually in the future to coincide, and that the international organisation set up for dealing with communications would little by little, as it came into force, tend to lessen differences now existing between the various States as regards both their theories and their actual policies. In this belief, the Commission decided merely to take official note of the various attitudes and to transmit them quite impartially to the permanent Organisation of the League of Nations.

You will observe that there is nothing new here. I have a great respect for any new questions which are raised at this Barcelona Conference; but, nevertheless, this discussion has proved that the principles contained in the *Green Book* text, those of the Czecho-Slovak and those of the British amendment are in reality identical. Further, if I understand the British Delegate aright, he said : “For my part I accept what has been said in the *Green Book*, but I am taking up the cudgels for the small countries. The small countries must say what they want”. It seems to me that most of the small countries are asking that we should keep to what was said in the *Green Book*. The British proposal gives the impression of being incomplete,—the Greek Delegation would like to see it amended. Again, there is talk of a Swedish amendment; but I think I may say that the Swedish amendment to the British proposal does not exist,—that which is required by the Swedish Delegation is already contained in the *Green Book*. It is for this reason that, after following these explanations, I should like an agreement to be reached and a vote to be taken,—if the Chairman consents. May I observe that not a single article has been unanimously adopted?

M. AHLBERG (Sweden; speaking in French). — The British Delegation may probably be right in regard to the small objections which it has raised, but it is simply a question of drafting, and presents little difficulty. With regard to the Czecho-Slovak amendment, I consider that there is no object in discussing it further; I declare that I support it, and I would request that a vote be taken upon it.

Mr. G. L. COLVIN (Great Britain). — Before a vote is taken on the Czecho-Slovak proposal, there is a question of principle which I should like to see settled by the Committee. Do we agree that, as between different routes, tariffs for international traffic may be varied on account of considerations of nationality? That really constitutes the whole difference between the British and Czecho-Slovak amendments, and I should like the point to be settled.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation cannot see its way to go further than Article 4 of the *Green Book*, but we consider that from the point of view of wording, the Czecho-Slovak proposal is much superior. I therefore support that proposal as amended by the Italian Delegation.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The Brazilian Delegation is ready to accept the Czecho-Slovak amendment, but, in our opinion, there is room both in it and in the British amendment for the text which we have proposed. I lay stress upon this point, because most important interests are at stake here, and I should like it at least to be placed on record that every effort was made by us to defend these interests.

The CHAIRMAN. — I gather that it is the wish of the Committee that we should pass to a vote on the Czecho-Slovak amendment, but before doing so, there is a question on which I should like the Committee to hear M. Etienne.

(1) See p. 241.

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — Article 4, both in the *Green Book* and in the Czecho-Slovak amendment, confirms the principle of equality of treatment for all in the same conditions, as applied by the Bern Convention, and as laid down in the Draft International Convention on the Conveyance of Passengers. The only remark I would make here is, that in the second paragraph of Article 4 of the *Green Book*, which re-appears as the last sentence of the Czecho-Slovak amendment, goods only are dealt with. This can be explained by the fact that the paragraph reproduces almost word for word Article 11, paragraph 1, of the Bern Convention, in which you will see that passengers have been passed over almost entirely. In Article 7 of the Draft Convention prepared at Bern—*Passengers and Luggage*—we find very similar provisions :

Transport rates shall be calculated in accordance with tariffs legally in force...

and a little further on :

Published tariffs only shall be valid; the conditions stipulated therein must be applied to all uniformly...

and again :

Any special treatment having as its object the granting of rebates to one or more passengers is expressly forbidden and considered null and void. Rebates may, however, be granted, provided they are duly published and equally applicable to all in the same terms and conditions.

I asked to speak in order to suggest the introduction before the word *consignors* of the words : *passengers or to one or more consignors*. In this way the paragraph would cover both passengers and goods.

The wording of the French text of the concluding sentence strikes me as being somewhat clumsy,—*étant autorisés toutefois*. We might say : *toutefois sont autorisés*. This sentence does occur in the Czecho-Slovak amendment, but it should be modified in the manner which I have indicated.

M. SINIGALIA (Italy; speaking in French). — In order to avoid lengthy discussion, the Italian Delegation had essayed to suggest as few changes as possible in the text of this article. I must, however, draw attention to something which is omitted both from the *Green Book* text and from that of Article 4 as proposed by the British and Czecho-Slovak Delegations. The British Delegation does not consider that there is such an omission; indeed, I have heard it stated by the Delegate of Great Britain that considerations of commercial competition would not be excluded by the terms of his text. Nevertheless, I do consider it necessary, in order that the article may read quite clearly, to insert a clause in conformity with Article 4 of the Convention on Freedom of Transit, stating that the possibility of tariff differentiation in accordance with considerations of commercial competition is in no way excluded. It might be thought that this is not stipulated in the article, because it was desired explicitly to exclude it; but that was surely not the idea of the article. I am simply suggesting a drafting improvement, in order to avoid any ambiguity on the point.

Another point. The *Green Book*, as well as the Czecho-Slovak proposal, speaks of tariffs applicable over the same throughout route, in the same direction, and in the same conditions; whereas the British Delegation, for motives the importance of which I realise, has omitted all mention of this in its proposal. I was under the impression that during the discussion which took place at Paris at the time when Article 4 of the Draft was being prepared, only rail routes were held in view. In the course of this morning's discussion of the words *throughout route*, I gathered that what the Committee had in mind was a combined journey by sea and rail. I should like an explanation on this point. Are these words intended to convey the idea of a throughout journey by rail, or would a throughout route by sea or inland waterway, and by rail,—in fact a combined journey—be included? For my part, I can ill understand that journeys effected by other than rail routes should be brought under the terms of a railway convention.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I trust that every delegation here will associate itself with the remarks made by the Italian Delegate, and that, as far as either the Transit Convention or the Railways Convention is concerned, there will be no misunderstanding on the question of commercial differentiation.

With regard to whether it is a question of a throughout journey effected by rail only or by rail and by inland waterway or maritime route, I am not competent; but I am sure that all the delegates agree with me in thinking that the words *throughout route* refer exclusively to a throughout rail route.

With regard to the third point—that raised by the Brazilian Delegate—he can receive full satisfaction, as he himself suggests, if not in this article, then in the Final Protocol.

As for Colonel Etienne's proposal, we are ready to accept it, and accordingly, before the examination of Articles 4 and 5 is concluded, Colonel Etienne, M. Sinigalia and M. Lankas—subject to the consent of the Chairman, and of a decision on the part of the Conference—might be asked to meet for a few minutes in order to complete the text. A vote could then be taken upon it. That is the proposal which I would make to the Committee.

M. POLITIS (Greece; speaking in French). — Before a vote is taken on Article 4, I will go back to the point which was raised by the British Delegation on the subject of the application of tariffs. Would not the Chairman put to the Committee the question whether it agrees to state that tariffs on different routes may vary in accordance with considerations of nationality?

M. WINIARSKI (Poland; speaking in French). — That cannot be done.

M. SATAKE (Japan). — The amendment proposed by the Japanese Delegation is of the simplest; it consists in adding at the end of the first paragraph of Article 4 the words *subject to the above-mentioned principle of equality*. May I be allowed to explain this amendment? There is no need here to point out the meaning of the expression *above-mentioned principle of equality*; it is, I think, the fundamental principle of Article 4 which stipulates that—as has often been repeated elsewhere—no differentiation shall be made in respect of tariffs on account of the nationality of passengers, the ownership or commercial origin of goods, or the flag or ownership of vessels. I believe that this is also understood to be the underlying principle of the establishment of local tariffs, or combined rail and sea tariffs, and I do not see why it should not be so conceived. But, in order to make it clear, the Japanese Delegation thinks it advisable that this should be distinctly laid down by means of the text which I have read, the object of which is to avoid any misunderstanding with regard to the application of the last part of the first paragraph of Article 4. According to the present wording, it might be supposed that the principle of equality laid down in this paragraph, by which any discrimination in conceding facilities or establishing tariffs is prohibited, is not to be applied where local tariffs or combined rail and sea tariffs are concerned, as laid down at the end of the paragraph. I trust, therefore, that this amendment will be adopted by the Committee.

The CHAIRMAN. — If no one else wishes to speak on Article 4, the best way, I think, would be to vote on the question whether the amended Article 4, as presented by the Czecho-Slovak Delegation, should be adopted in principle and referred to a sub-committee, which could consider all the amendments handed in to-day, and, after deciding how far they are in accord with the principle of the article, could proceed to draft the final text.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It would be better to take a vote on the principle of the Czecho-Slovak proposal as amended by the Italian Delegation, and also on the suggestions made by M. Étienne.

M. POLITIS (Greece; speaking in French). — There is a third point to which I drew the attention of the Committee a short time ago. The vote should have equal

reference to the Italian amendment, the proposals of M. Étienne and the original British motion. These questions are of great importance. A vote cannot be taken on the principle so long as this fluctuates according to whether tariff variations on account of nationality are allowed or disallowed.

Mr. G. L. COLVIN (Great Britain). — The British Delegation associates itself with the Greek Delegation on this point.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — The Portuguese Delegation has supported the Brazilian amendment, and would like to know what has become of it. Will it be discussed with the article or is it dropped?

The CHAIRMAN. — The Brazilian amendment would go to the Sub-Committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In order to avoid any misunderstanding, I should like to draw the Committee's attention to the marked difference in principle which exists between the proposal of the British and Greek Delegations and that of the other delegations. If we vote for both principles simultaneously the Sub-Committee will have no indication as to the lines on which it should work. If we wish to make the discussion clearer, we must vote first on the principle which is supported by the British and Greek Delegations; we could then take a decision on the Czecho-Slovak amendment, which is supported by the other Delegations.

M. POLITIS (Greece; speaking in French). — I agree with M. Avramovitch in advocating this division.

M. VELASQUEZ (Paraguay; speaking in French). — It is time that we brought to an end our discussion of Articles 4 and 5. I am in favour of the Chairman's proposal, and M. Avramovitch's observation also appears to me justified.

In order to facilitate the work of the Sub-Committee which is to be set up, the Committee must know the fate of the Japanese amendment; the question should therefore be definitely settled now.

The CHAIRMAN. — We could vote first of all on the Japanese amendment and then upon the words : *...over the same throughout route, in the same direction and in the same conditions*, which the Swedish Delegation proposes to add, and to which objections are raised by both the British and Greek Delegations. A vote could then be taken on the principle contained in the Czecho-Slovak amendment to Article 4.

M. POLITIS (Greece; speaking in French). — There is no question of omitting the phrase *over the same throughout route...* but only of modifying it.

The CHAIRMAN. — We can also vote on the British amendment as it stood; but would it not be better to begin first of all with the Japanese amendment?

Mr. G. L. COLVIN (Great Britain). — Am I to understand that the other amendments which have been handed in, in common with the Japanese amendment, apply equally to the Czecho-Slovak and British amendments?

M. SINIGALIA (Italy; speaking in French). — I should like to impress upon the Committee the importance of this vote. Were the Swedish amendment adopted, this would amount to omitting Article 4 altogether.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is for this reason that we request an immediate vote.

M. SINIGALIA (Italy; speaking in French). — I should much prefer to omit the last part of Article 4,—it would be more logical.

The CHAIRMAN. — I will put to the vote the amendment of the Japanese Delegation.

The amendment was not adopted.

I put to the vote the amendment of the British Delegation.

The British amendment was rejected by 19 votes to 5.

I put to the vote the amendment submitted by the Czecho-Slovak Delegation.

The amendment was adopted by 19 votes to 2.

It is understood that the Czecho-Slovak amendment is accepted in principle and is referred to a sub-committee, which will consider it simultaneously with the other amendments on the same article, which have not been discussed to-day, including the observation made by the Director of the International Office at Bern.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is of course understood that there is no question of any new amendments which might be handed in, but only of those emanating from the Italian Delegation and from Colonel Étienne.

The CHAIRMAN. — It is only a question of amendments handed in during this meeting,—in particular, the Brazilian amendment.

If there is no objection, I suggest that the Sub-Committee which we are to appoint to deal with these texts might include representatives of Belgium, Brazil, Chile, Czecho-Slovakia, Great Britain, Italy, Roumania and Sweden, and M. Étienne.

The meeting adjourned at 1.15 p.m.

THIRD MEETING OF THE COMMITTEE ON RAILWAYS

(Monday, April 4th, 1921, at 10 a.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 4 — PROPOSAL OF INTERNATIONAL LABOUR OFFICE
DISCUSSION OF ARTICLE 5 — DISCUSSION OF ARTICLE 6

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLE 4

The CHAIRMAN. — We will resume the discussion of Article 4, which was referred to a Sub-Committee. M. Lankas, the Rapporteur, will speak.

M. LANKAS (Czecho-Slovakia, Rapporteur; speaking in French). — After having carefully studied the text of Article 4 and the amendments proposed to it, the Sub-Committee, the members of which were animated by a spirit of conciliation, was not slow to find a formula giving satisfaction to everyone. The text proposed by the Sub-Committee reads as follows :—

Transport Tariffs and Facilities.

The concession of transport facilities or the establishment of tariffs and their adoption and application as regards passengers, subjects of any one of the Participating States, or goods coming from or proceeding to any one of the Participating States, over the same through-out route, in the same direction and in the same conditions, shall not depend either upon the nationality of the passengers, or upon the ownership or commercial origin of the goods, or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. Transport rates shall be calculated in accordance with the tariffs legally in force and duly published, and any private agreement having as its object the granting of rebates to one or more passengers or to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

This stipulation does not prevent the existence and establishment of different tariffs for internal, import, export or transit traffic, having regard to the traffic conditions and to commercial competition between transport routes, nor does it affect the question of combined rail and sea tariffs.

The Sub-Committee took as a basis the amendment of the Czecho-Slovak Delegation; it had also to consider three other amendments.

The first, which was proposed by M. Étienne, was to insert after the words *having as its object the granting* the words *to one or more passengers*, in order to indicate clearly that the article also applies to passenger traffic. This amendment was adopted and the words were added to the text.

The second amendment before the Sub-Committee was that submitted by the Italian Delegation, suggesting that the text of Article 4 of the Convention on Railways should be brought into accord with that of Article 4 of the Convention on Freedom of Transit, and that with this object the following phrase should be inserted : *having regard to traffic conditions and to commercial competition*. Certain Delegations took the view that this addition was not necessary, but the Sub-Committee ultimately agreed to insert the phrase in Article 4, not at the suggestion of the Czecho-Slovak Delegation,

in the first paragraph, but in the second; in order to conform exactly to the text of Article 4 of the Transit Convention, it was necessary to leave untouched the passage relating to the principle of equality of treatment. It was for this reason that it was found better to insert the phrase in the second paragraph, and the Sub-Committee came to a unanimous agreement with regard to the wording.

There was yet another amendment to be considered by the Sub-Committee, emanating this time from the Belgian Delegation (1). M. Hanrez had proposed that there should be inserted in what is now paragraph 2, after the word *preventing*, the words *the existence and establishment of tariffs*. It was unanimously decided by the Sub-Committee to adopt these words, in order to indicate clearly that this article allows full liberty, not only in the future but also at the present time, and that it in no way affects freedom to establish local, import and export tariffs. In this connection, in order to make assurance doubly sure, emphasis was laid by several delegations on the fact that, in their view, every country may establish different tariffs with the object of facilitating the transport of certain internal products which are open to competition by foreign products of a similar kind, in view of the necessity of assisting certain industries by means of tariff reductions. Other delegations, again, laid stress on the idea that every country remains free, as long as it respects the principle of equality, to establish its import, export and local tariffs as best may correspond with its own interests. There is nothing new in this idea, which was enunciated in the *Green Book* when the matter was discussed at Paris. Certain Delegations, however, desired to emphasise their view,—without, of course, altering the text of the article.

Lastly, the Sub-Committee dealt with the Brazilian amendment (2) which read as follows :—

This provision may be inapplicable when the owners or charterers of the vessels employed before or after the transport by rail establish differential freight scales.

The Sub-Committee afforded most careful consideration to this amendment, and endeavoured to ascertain its exact scope; it was of opinion that the principle embraced not only the part of the transport accomplished by rail, but the whole of the transport,—in fact the whole journey, both by rail and sea. According to this amendment a State would have the right to withhold the benefits of the Railways Convention should another State fail to accord equitable commercial treatment,—that is to say, should freights be differentiated to such a degree that the principle of equality was seriously infringed. There were members of the Sub-Committee who considered that the Brazilian view was up to a certain point a fair one; but the Sub-Committee decided that the question exceeded the competence of the Barcelona Conference, and would be better regulated in the form of a *vœu* to go in the Report on the Transit Convention, and it was accordingly decided that the amendment should not be inserted in Article 4. Moreover, having learnt that the amendment which had been submitted in connection with the Transit Convention would be considered after the Barcelona Conference, the Brazilian Delegate withdrew his amendment; whilst the Sub-Committee, having also studied it in respect of its applicability, decided unanimously that in practice it would be found almost impossible to apply the principle therein contained.

With the Chairman's permission, I will complete my Report in a few words.

During the study of the Brazilian amendment it was pointed out that the Brazilian Delegation had already received satisfaction with regard to combined tariffs. It was also pointed out, with justice, that in the second paragraph of the Sub-Committee's text it is explicitly stated that *this stipulation does not... affect the question of combined rail and sea tariffs*, and that in effect, therefore, the question of combined tariffs is entirely left aside by this article, and is completely reserved for decision solely by the States concerned.

M. LOISEAU (France; speaking in French). — At the end of the last meeting, I requested our Chairman to be good enough to allow me to speak before the vote was

(1) See p. 52.

(2) See p. 56.

taken on Article 4, in order to put a question to M. Étienne, whose ability and courtesy have already won such good-will on the part of this gathering. It is a question of the private agreements to which reference is made in this article, by the terms of which they are declared to be *expressly forbidden and considered null and void*. In the course of a previous speech, M. Étienne has already reminded us that such agreements are likewise prohibited, both in the Bern Convention on the subject of goods, and in the draft provisions relating to passenger traffic which it is proposed to add to this Convention. The point to which I desire to call the attention both of M. Étienne and of our Committee, before Article 4 is put to the vote, is whether the efficacy of this prohibition is in proportion to the solemnity with which it is proclaimed,—in other words, what is the effective and usual penalty for infringing it? The penalty laid down for such infringement is that the agreement in question shall be declared null and void. I do not consider it strong enough. In civil law when a contract concluded in defiance of the law is declared by that law to be null and void, I am ready to admit that this constitutes a penalty which will touch very closely upon the interests of the parties concerned. When for example the law prohibits agreements with regard to succession, or stultifies a donation of real estate because the procedure adopted was irregular, the parties are certain to obey because, were they to disregard the law, they would be bound to fall short of their aim, and would be exposed to consequences detrimental to themselves or to their successors. This fact in itself constitutes the penalty—the *pain*, if you like, for their disobedience, but here, in the circumstances provided for under Article 4, as also under the terms of the Bern Convention, the prohibited agreement may resolve itself into an act of collusion, which, if it is not exposed, allows the parties to reap the expected benefits, and which, if it is found out, does not in reality affect either of them prejudicially.

A railway company, in order to obtain a firm's custom, makes an arrangement with it which amounts to a rebate upon the official published rate, and the fact comes to light. What does it matter to the company and to its customers if their contract is declared "null and void"? There is no question for these offenders—these *accomplices*, I was going to say, of pleading the validity of the arrangement *inter se*; they get off with merely dropping the contract, and with the option of subsequently concluding another one,—or the same,—taking care the next time to cover up more carefully the tracks of their illicit operation.

What would really be of some use would be to lay down a penalty according effective guarantees to third parties (and by third parties I mean other railway companies, whose interests are adversely affected by such operations), and honest—I was going to say artless—traders who stand by the published rates, and into whose heads the idea of obtaining an illicit concession never enters. I see nowhere any provision for a penalty of this kind, either in the Bern Convention, or in the text now before us. Is this silence deliberate? Is it fully realised that the prohibition is thereby rendered pretty well ineffectual, and that, if I may venture to use a homely but graphic phrase, the thunderbolts launched against special agreements by these stipulations make a noise without touching anyone?

That is the question which I would submit to the authority and experience of M. Étienne.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — As M. Loiseau has explained, the Bern Convention forbids special agreements having as their object the granting to certain persons of privileges not conceded to all. I must state that, up to the present, no complaints have been received by the Central Office on the subject. This probably results from the fact that such agreements are concluded with some secrecy. Perhaps I shall be able to give satisfaction to M. Loiseau by telling him that I have noted his question, and that I hope the International Office will not fail to bring it up at the next Conference for the revision of the Bern Convention.

M. LOISEAU (France; speaking in French). — In view of the importance of the question, I will ask, in conjunction with the Belgian Delegate, that a full report of my question and M. Etienne's answer be included in the records.

M. CARACOSTEA (Roumania; speaking in French). — I should like to know exactly what is desired by our French colleague. Does he wish to eliminate the clause or to supplement it by laying down penalties? If he wishes to omit the clause then I am in opposition; I know that there are companies which make special agreements which are considered null and void because they are illicit. You say that you do not know this, it is true, but when you know it you will be able to appeal to the Advisory and Technical Committee, which will take the necessary punitive measures.

M. LOISEAU (France; speaking in French). — I do not wish to delete anything, nor do I ask for any penalties. I merely consider it essential that the attention of the Conference should be drawn to the point. M. Etienne gave a completely satisfactory reply when he said that he would submit the affair to the International Office at Bern.

The CHAIRMAN. — M. Loiseau's question and M. Etienne's reply will appear in the records. We will now proceed to vote upon Article 4 as drafted by the Sub-Committee.

M. BARBOZACARNEIRO (Brazil; speaking in French). — I should like to declare that the Brazilian Delegation reserves the option to propose that, should the Sub-Committee which is dealing with this question not arrive at any agreement upon a general formula applicable to all conventions, a reservation should be inserted in the Final Protocol concerning reciprocity of treatment for maritime transport.

The CHAIRMAN. — This will be noted in the records. As no one else wishes to speak I will put Article 4 to the vote in the form proposed by the Sub-Committee.

Article 4 was unanimously adopted.

PROPOSAL OF THE INTERNATIONAL LABOUR OFFICE

The CHAIRMAN. — The Committee has been apprised by the International Labour Office of the following Draft Recommendation :

The Conference on Communications and Transit,

Recognising that it is highly desirable to make the lives of the blind as normal as possible, and to assist in providing them with means for contributing to the general productiveness and for gaining their livelihood by their labour;

Recognising that the difficulties which sometimes prevent the blind from travelling by rail, and particularly the fact that they must always be accompanied when travelling, are an obstacle to the attainment of this object;

Recommends :

(a) That the administrative bodies of public means of transport in each country should give special consideration to the position of blind workers travelling in the exercise of their vocation;

(b) That they should, in particular, consider the possibility of authorising blind workers, travelling in the exercise of their vocation, to be accompanied by a guide without having to pay two fares, since this increases the pecuniary disadvantage under which the blind labour, as compared with other workers;

(c) That they should agree to give international recognition to some form of legal certificate, which should be accepted as evidence of the status of blind worker, with a view to the concession of any facilities which it may be possible to grant.

This Draft Recommendation emanates from the National Office for the Assistance of Blind Workers. No doubt the Committee will have to consider whether it is within its competence to deal with it; but M. William Martin, representing the International Labour Office, is here present and would like to be accorded a hearing. Is it the wish of the members of the Committee that he should address them?

M. CARLIN (Switzerland; speaking in French). — I consider that a useful and just purpose would be served if we accorded a hearing to M. William Martin, speaking on

behalf of the International Labour Office. With his explanation as a basis, we could then enter upon a more thorough discussion of the subject.

M. CARACOSTEA (Roumania; speaking in French). — I believe that the Draft Recommendation before us does not concern the work upon which we are at present occupied. Almost every country in the world is prepared to make sacrifices in favour of the blind, but I doubt whether special stipulations could be included under an international scale of rates for the blind and their companions. It depends upon the circumstances whether any reduction in fares is afforded for the blind, as also for their companions. But should a reduction be made for a blind traveller who is well-to-do? In my opinion the question should remain within the province of each individual railway company, and not be discussed by us here.

The CHAIRMAN. — The only question is whether the matter is or is not within the Committee's competence. I propose that a hearing be simply accorded to M. Martin, representing the International Labour Office.

M. CARACOSTEA (Roumania; speaking in French). — We will hear him with pleasure.

M. William MARTIN (representing the International Labour Office; speaking in French). — Mr. Chairman, Gentlemen, I must first of all thank the Committee for its kindness in allowing a representative of the International Labour Office to speak in order to bring before you the arguments which seem to us to militate in favour of the *vœu* now before the Committee.

Allow me to say at the outset that this *vœu* is a witness of the hopes which throughout the world hang upon your labours; for it was the French organisation of the National Office for the Assistance of the Blind which appealed to the International Labour Office, as the natural organ for the protection of all workers under difficulty, asking it to lay before you a request with a view to according facilities to blind workers. The International Labour Office, which has for some time past been organising a department for labour questions in respect of the disabled, officially transmitted this request to the Secretary-General of the League of Nations for submission to you on March 4th last.

You have before you the text of the *vœu* proposed by the International Labour Office. As the Chairman has been good enough to read it aloud, with your permission I shall not take up your time by reading it again. I wish merely to emphasise very briefly the fact, which I consider has a certain importance, that this is not a recommendation but a *vœu*. I feel impelled to make this distinction because, in the legal terminology of the League of Nations, the word *recommendation* has a slightly stronger force than the word *vœu*; and it is important that the question should be exactly stated. It is a *vœu* which is now before you.

I feel that I should be exceeding the privilege which you have granted me if I dealt with the question of competence, and I therefore do not propose to do so; but I am sure that you will not mind my appealing to you to settle this question with the greatest possible degree of liberality. As I have already said, it is because public opinion in every country, without perhaps a very clear idea as to the extent of the competence and as to the limited powers of this Conference, has been inspired by a great hope to follow the course of your labours, and believes that it may result in advantages of travel, both for individuals and for various classes of the population,—it is for this reason, I say, that this request is submitted to you. The whole work of the League of Nations rests, in the last resort, upon public opinion, and upon the conception entertained by the peoples as to what is being done here, and the Conference cannot therefore remain indifferent to these hopes, which, allow me to tell you, will receive fuller satisfaction by the medium simply of this *vœu*, which is to have a practical application to individuals, than through that of legal principles of which the issue might be infinitely vaster, but which might perhaps meet with less speedy comprehension on the part of public opinion as a whole.

After these few preliminary words, I should like, with your permission, to enlighten you on the subject of the practical scope of the proposal in question. The results

obtained in various countries by the re-education and placing in employment of the disabled have proved that the greater number of the blind are capable of work. It has been estimated that their output is about 50 % of that of a normal workman, in what are known as "blind occupations", such as basket-making, brushmaking and chair-bottoming. In certain cases their output may even equal that of an ordinary workman,—for example, in the manipulation of machine tools in factory-work. In view of the experiments made during the war, the various organisations were led to ask that all the blind should be accorded the benefit of the professional training and facilities for gaining employment which had hitherto been reserved for men blinded in the war, whilst these experiments have also occasioned an important movement for the systematic assistance of the blind by means of work.

Two questions will occupy the Conference in connection with the *vœu* submitted by the International Labour Office; what is the number of blind who may benefit from the privileges which it is proposed to offer, and by what practical means, in order to avoid any abuse of the system, could blind workers be distinguished? There are no complete statistics of the blind throughout the world, but there are partial statistics for certain important countries. The population of Germany includes 35,000 blind, of which 4,000 are men blinded in the war; that of France, 27,000, of which 3,000 were blinded in the war; and that of Great Britain 30,000, including 2,000 blinded in the war. What proportion of this number may be considered as workers? Taking as a basis the English statistics, we arrive at the result that about 60 % of the blind are incapable of work on account of youth or infirmity. This gives a maximum of 40 % of the blind in each country who might be allowed to benefit by special privileges. Naturally, however, the number of journeys made by blind workers in the exercise of their vocations is not likely to be large. About three-quarters of them have been re-educated in special institutes which, at the conclusion of their apprenticeship, grant them certificates of proficiency. With regard to those of the blind who have not attended a special institute, but who nevertheless exercise a vocation, some authority might be made responsible for issuing them a certificate to this effect.

In Germany there are special departments for dealing with the blind in the public Employment Exchanges of important centres such as Berlin and Dresden. In England, the creation of a National Committee and of district and local committees under the control of the Ministry of Health, having as their task to draft the blind into institutes for re-education, to place them in situations, and to procure work and raw materials for those of them who work at home, is at present in course of accomplishment. In France, the National Office for the Assistance of Blind Workers is exerting itself in the same direction. It may be stated that the number of workers who would be in a position to benefit by the favourable treatment contemplated is not sufficiently large to constitute a burden on the administrative bodies concerned. Qualified authorities could without much difficulty be appointed to certify blind workers as such, and in this way any abuses could be avoided.

Some countries, such as France, have already entered on the path which the blind themselves have suggested to the Conference, but only men disabled in the war have benefited. Blind civilians can only obtain free travel passes when they are in want,—a condition which completely changes the character of the benefit accorded to them.

I should like once more to point out that the International Labour Office does not ask in the least that the Conference should exceed its powers by setting up as a rival to the administrative bodies in each country which are responsible for the carrying out of railway tariffs of every kind. It only asks that the Conference should register its sympathy at least by encouraging the great work of re-education of the blind, which has been undertaken in order that their lives may revert to as normal conditions as possible. The International Labour Office, whose views I represent, ventures to hope that the Conference on Communications and Transit will not remain insensible to the fate of blind workers, which is so eminently worthy of interest.

The CHAIRMAN. — I am sure that we all wish to thank M. William Martin for his interesting statement. I do not propose to ask the Committee to delay its work by discussing the matter at present but I hope that the various delegations will consider

carefully whether we are competent to deal with the problem, in the first place at this Conference, and in the second place in this Committee; we can decide the question when the meeting is finished.

DISCUSSION OF ARTICLE 5

We will now pass to the discussion of Article 5. I will read the text :

Provisions immediately compulsory.

In the absence of existing conventions, and until such time as the conventions referred to in Article 4 have been concluded, the provisions defined in the aforementioned article shall be considered as binding upon each of the High Contracting Parties as from the coming into force of the present Convention.

To this article two amendments have been submitted, one by the Czecho-Slovak Delegation (1) and the other by the British Delegation (2). You may remember that there was a third amendment, which was submitted by the Chilian Delegation at an earlier meeting (3), but the Chilian Delegate has told me that he does not wish to press it. I think it will be best to work on the basis of the Czecho-Slovak amendment.

I should like to call M. Lankas' attention to the following point : in the English text, the introduction of the word *certain* would appear to limit very much the scope of the amendment; is it absolutely necessary to retain this word?

M. LANKAS (Czecho-Slovakia; speaking in French). — My remarks will bear chiefly upon the mention made in our amendment of *certain groups of contiguous territories*. As I said in my statement at the General Discussion (4), it appeared to us that it would be well to include in the Convention a provision allowing regional and special Conventions to be concluded; they would be special in the sense that they would apply to certain groups of limited territory. Europe, for example, or at least Continental Europe, would be considered as a limited territory. That is what we mean by the words *certain groups of contiguous territories*. To us, the words *certain contiguous territories* by themselves would have no meaning whatsoever. I do not know whether the choice of the word *certain* has been a good one, but if the amendment is adopted, I will fall back upon the Drafting Committee to find a better one. Article 5 says nothing more than what was said at the beginning of the old Article 4, namely, that :

In the absence of relevant existing conventions, special conventions shall provide for the application of the principles enunciated in the preceding articles... This for certain groups of territory.

I think it is necessary to emphasise again the fact that if we adopt Article 5 in the form proposed by us, Article 5 of the Draft is no longer necessary. Since Article 4 in the form in which we have adopted it is independent, and since its application is compulsory as soon as the present Convention comes into force, it appears to me that this fact need not be repeated. Our chief object in drafting Article 5 as we have done is to indicate that special Conventions are to provide for the application of the principles enunciated in Articles 1 to 4. These Conventions will apply to limited groups of territories; they will be regional, not world-wide Conventions.

(1) The text of the Czecho-Slovak amendment reads as follows :

“Omit this article and substitute the following :

“‘Special Conventions. In the absence of relevant existing conventions, special conventions shall be concluded to give effect to the principles laid down in the preceding articles in respect of certain groups of contiguous territories.’”

(2) See footnote (1), p. 51.

(3) See p. 55.

(4) See p. 22.

M. HANREZ (Belgium; speaking in French). — On behalf of the Brazilian, Chilian and Belgian Delegations, I propose, in order to make the tone of this article less imperative, to insert the words *as far as possible*. The text would then read as follows :

In the absence of relevant existing conventions, special Conventions shall be concluded to give effect *as far as possible* to the principles laid down in the preceding articles in respect of certain groups of contiguous territories.

M. LANKAS (Czecho-Slovakia; speaking in French). — I must emphasise the fact to the Committee that if we accept the amendment proposed by the Belgian Delegation, it becomes absolutely necessary to repeat the words of the old Article 5 and to say : *In the absence of relevant existing conventions, special conventions shall be concluded to give effect as far as possible to the principles laid down in the preceding articles*. We must then add : *Nevertheless, the provisions of Article 4 shall be considered as binding as from the coming into force of the present Convention*. If we do not do this, Article 4 would be so much weakened that it would cease to have the meaning we intended.

M. SINIGALIA (Italy; speaking in French). — I am in complete agreement with the view expressed by the Czecho-Slovak representative. The addition of the words proposed would destroy the effect of Article 4.

I am not quite clear as to the intention expressed in the words *as far as possible*. Is it desired to make exceptions to the principles laid down in Article 4? If so, it would have been easy to say this in the text of Article 4 itself; but now that Article 4 has been unanimously adopted, I do not think this can be done.

Mr. G. L. COLVIN (Great Britain). — I gather that we are all really in agreement in principle; it is now largely a question of wording. I have no particular objection to accepting the proposal made by the Belgian Delegation, subject to the addition of the words proposed by M. Lankas. There is another alternative, however, and that is the amendment put in by the British Delegation; it appears to me to meet some of the difficulties. Article 4 of the British proposal (which now corresponds to Article 5) reads as follows : *In the absence of relevant existing conventions, special Conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2 and 3*. This text would carry out exactly what was proposed by the Belgian Delegation and by M. Lankas. I do not mind what method is adopted; it is not an important matter, but largely a question of wording.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would observe that there is a difference between the British and the Czecho-Slovak amendments. In the first place, the British amendment makes no mention of contiguous territories, and in the second place, it only applies to Articles 1, 2 and 3. If these articles only are quoted, it cannot remain in doubt but that the terms of Article 4 are to be applied and are to become binding immediately upon the conclusion of the Convention.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — In agreement with the Delegates of Belgium and Chile, I declare our willingness to support the British amendment. We would propose that it take the place of the Czecho-Slovak amendment, and that a mention of Article 4 be also made.

M. HANREZ (Belgium; speaking in French). — I consider that it would be better to say : *In the absence of relevant existing Conventions, the High Contracting Parties recognise the necessity of providing as far as possible for the application of the principles enunciated in Articles 1, 2, 3 and 4, by means of special Conventions*.

M. LANKAS (Czecho-Slovakia; speaking in French). — Were the Belgian Delegate's proposal accepted, it would completely alter the tone given to Article 5 in the *Green Book* text. According to the latter, special provisions concerning equality of treatment in respect of rates are to come into force immediately the Convention is concluded.

If you introduce the words *as far as possible*, you rob Article 4 of much of its force. The Czecho-Slovak Delegation cannot agree to this change.

M. HANREZ (Belgium; speaking in French). — The object of our proposal is to soften down the tone of Article 5, which we consider too imperative. Special Conventions exist at the present time which cannot be denounced or abrogated at a moment's notice; the matter calls for careful study, and we cannot devote ourselves to it until we are back in our respective countries. We have no intention whatever of escaping from any obligations—our object is that pursued by the Conference itself; but it seems to us arbitrary to say in this imperative fashion *shall provide in every case*. What we ask for is some softening down of the terms, in order to allow of a period of transition during which those existing Conventions which cannot be denounced immediately may be carried out.

M. LANKAS (Czecho-Slovakia; speaking in French). — I accept the British proposal : *In the absence of relevant existing Conventions, special Conventions shall provide for the application as far as practicable of the principles enunciated in Articles 1, 2 and 3, provided the words are added : in respect of certain groups of contiguous territories.*

Mr. G. L. COLVIN (Great Britain). — I am quite in agreement with that proposal. The only modification which I would suggest is to omit the word *certain*; perhaps its place could be taken in the English text by the word *suitable*.

M. LANKAS (Czecho-Slovakia; speaking in French). — I agree to delete the word *certain*.

The CHAIRMAN. — Does M. Hanrez accept the British amendment, or does he maintain his own proposal?

M. HANREZ (Belgium; speaking in French). — We maintain our proposal.

M. CARLIN (Switzerland; speaking in French). — As, under the condition indicated, the Czecho-Slovak Delegation supports the British amendment, and as the British Delegation accepts the addition to the text proposed by the Czecho-Slovak Delegation, we agree. I would, however, draw your attention to a question of drafting. As the British Delegation appears to cavil at the word *certain*...

M. LANKAS (Czecho-Slovakia; speaking in French). — We have agreed to the deletion of the word *certain*.

M. CARLIN (Switzerland; speaking in French). — ...we might say *in respect of groups*...

I request further that the word *cohérents* in the French text should be done away with, and that we should say : *groupes de territoires contigus*. The word *cohérent* usually conveys something logical, but in this context it becomes incoherent.

M. LANKAS (Czecho-Slovakia; speaking in French). — May I be allowed to observe that I drew the word *cohérent* from another proposed amendment, the object of which was much the same as our own. I view with satisfaction the Swiss Delegate's success in finding the expression which I was seeking.

The CHAIRMAN. — These suggested alterations are in reality no more than drafting changes, and are subject to the British and Czecho-Slovak amendment being accepted. I think it would be desirable to vote now upon the Belgian amendment.

M. LANKAS (Czecho-Slovakia; speaking in French). — In voting on the British and Czecho-Slovak amendment we are at the same time voting on the Belgian amendment, which surely only requires the addition of the words *as far as possible* in respect of Article 3, but not in respect of Article 4. In the Sub-Committee the Belgian

Delegation accepted Article 4 in its obligatory form, and I cannot therefore believe that it desires to limit the application of the article.

M. HANREZ (Belgium; speaking in French). — No, Article 5 has a general scope; it mentions neither Article 1 nor Article 2 nor Article 3. As I read the text of the Czecho-Slovak amendment, the words *shall be concluded to give effect to the principles laid down in the preceding articles* signify *to give effect immediately*. Conventions exist which cannot be denounced at a moment's notice; they are binding during a stated period. There is no question of derogating from the principles laid down in the article. We ask that the words *as far as possible* be added in order to enable these principles to be applied where possible.

M. LANKAS (Czecho-Slovakia; speaking in French). — There is some confusion here. I ask the Belgian Delegation whether it wishes the terms of Article 4 to have a general application or to be applied only as far as possible.

M. HANREZ (Belgium; speaking in French). — As far as possible. We will apply them gradually as and when we can.

M. LANKAS (Czecho-Slovakia; speaking in French). — I cannot agree with this view; it is in formal opposition to the attitude adopted by the Sub-Committee.

M. HANREZ (Belgium; speaking in French). — Will you accept in place of the words *as far as possible* the words *regard being had to existing Conventions*?

The CHAIRMAN. — Will M. Lankas read the text of Article 5 with the Czecho-Slovak and British amendments?

M. LANKAS (Czecho-Slovakia; speaking in French). — This is Article 5 :

In the absence of relevant existing Conventions, special Conventions shall be concluded to give effect as far as possible to the principles laid down in Articles 1, 2 and 3 in respect of groups of contiguous territories.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We all agree as to the principle; I think there is merely a misunderstanding. The Czecho-Slovak Delegate put a question to M. Hanrez, who replied, yet I have the impression that there is a misunderstanding between them. M. Hanrez wishes to apply Article 4 as adopted...

M. HANREZ (Belgium; speaking in French). — Exactly.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — ...but he rightly wonders how the stipulations of this article could be applied immediately, on account of Conventions already in force...

M. HANREZ (Belgium; speaking in French). — That is exactly it.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — ...the date of whose possible supersession by other conventions cannot possibly be foreseen. I think this must be M. Lankas' idea. It would certainly be well to accord a time-limit for the application of the article. We must find a form of words. I will not suggest any; I simply wished to throw light upon the position.

M. HANREZ (Belgium; speaking in French). — I believe that thanks to the sagacity of M. Avramovitch, we are in agreement. Instead of saying *as far as possible*, we will add to the Czecho-Slovak text the words *as soon as possible*.

Mr. G. L. COLVIN (Great Britain). — I am afraid that this wording would lessen the scope of Article 4.

M. POLITIS (Greece; speaking in French). — Certainly, in adopting this wording we are touching on Article 4 which, be it noted, is independent of the special Conventions to be concluded. It is an article which contains provisions both general and binding.

The CHAIRMAN. — Could not the Belgian Delegate adapt the formula which he has proposed to fit the British amendment?

M. HANREZ (Belgium; speaking in French). — I do not mind as long as the idea of my proposal is applied.

M. LANKAS (Czecho-Slovakia; speaking in French). — It will be necessary to go back a little on the original draft. In that text there were three articles in the form of recommendations, and one article making provision for their strict application—namely, Article 4, in which it was stated that special Conventions would provide for the application of the principles enunciated in Articles 1, 2 and 3. But it was laid down in the old Article 5 that the provisions defined in Article 4 were to be *binding... as from the coming into force of the... Convention*. The situation has now changed. The question of equality of treatment in respect of tariffs is dealt with in an independent article, where the rule is laid down imperatively; it is therefore unnecessary to repeat it in another article such as Article 5 of the Draft.

We have proposed a new Article 5, which stipulates simply that it will be necessary to conclude special Conventions on the subject of railways, regional conventions, not to apply throughout the world, but only to certain groups of territories. That is the fundamental idea of our article, and I believe that you have all accepted it, with certain modifications in the wording. M. Hanrez wishes to add *as far as possible*. This we cannot admit, because it would seriously restrict the application of Article 4. We announced our acceptance of the British amendment stating that the limitation *as far as possible* will apply only to Articles 1, 2 and 3; it in no way affects the application or scope of Article 4. M. Hanrez now proposes another formula which also represents a restriction upon Article 4; he proposes to insert the words *as soon as possible*. I now consider that after all we ought not to accept this amendment either, because, contrary to what I believe to be the opinion of the majority of the Committee, it postpones the application of Article 4. I will therefore reconsider my original proposal, and will propose the adoption of the British amendment, supplemented by the phrase concerning contiguous territories. I am of opinion that we cannot accept the Belgian amendment, all the more because M. Hanrez received satisfaction in the article which mentions the *existence of tariffs* and which indicates that there is no obligation to alter existing tariffs immediately.

The CHAIRMAN. — I think the issue is now clearly defined. It is desired by the Belgian Delegate, contrary to the intention of the authors of the British and Czecho-Slovak amendment, to bring Article 4 into the purview of the addition which he proposes. Surely, therefore, we could now obtain a clear decision by asking the Committee to vote as to whether it accepts the Belgian view or not.

M. SINIGALIA (Italy; speaking in French). — Before voting I should like to say another word on this question. I think that after all I support fully the views put forward by the representative of Czecho-Slovakia. I should like to remind the authors of these amendments of the existence of Article 16 of the Convention, which accords them full satisfaction by granting all the time needed to make the necessary modifications in any Conventions the terms of which might not be compatible with those of our Convention. This fact may surely serve to convince them that there is no need to add the words *as soon as possible*.

M. HANREZ (Belgium; speaking in French). — I did not think that my little observation would lead to such a diffuse discussion. As long as the request made by Brazil, Chile and Belgium is reported in the records of the meeting and in the Report, then, as I am not to be allowed anything better, I will be content. I do not oppose a vote upon my motion if it is desired, but if it is considered sufficient to note it in the records of the meeting and in the Report, I will leave the decision to you.

The CHAIRMAN. — What is the opinion of the Committee? As M. Hanrez has not demanded a vote, will the Committee be content with his suggestion?

M. SINIGALIA (Italy; speaking in French). — The principle would remain. The principles upon which Article 4 are founded would be affected, even if not by an express provision, at least by a statement in the records of the meeting. The question is of sufficient importance to call for settlement by an unequivocal vote.

The CHAIRMAN. — Will not M. Sinigalia's view be met by the fact that we shall vote ultimately upon the combined British and Czecho-Slovak amendment?

M. SINIGALIA (Italy; speaking in French). — It comes to the same thing.

The CHAIRMAN. — Is it desired by the Committee to vote upon the text of Article 5 as agreed between the British and Czecho-Slovak Delegations?

M. POLITIS (Greece; speaking in French). — I ask that the article be read.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I also ask that it be read.

The CHAIRMAN. — M. Lankas will read the article as at present drafted.

M. LANKAS (Czecho-Slovakia; speaking in French). — The following is the new text of the article :

In the absence of relevant existing Conventions, special Conventions shall be concluded to give effect as far as possible to the provisions laid down in Articles 1, 2 and 3 in respect of groups of contiguous territories.

M. POLITIS (Greece; speaking in French). — Before voting, may I suggest that it would be better and more logical to place this article before Article 4?

The CHAIRMAN. — We discussed the point raised by the Greek Delegate, and even voted upon it, last Saturday, and it was decided to place this article after Article 4.

M. POLITIS (Greece; speaking in French). — The day before yesterday we had not yet before us the text either of Article 4 or of Article 5. Until we had it, we could not take a decision; but now that we are acquainted with it, the natural thing is to place Article 5 before Article 4.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — I have only one word to say. In connection with the expression : *In the absence of relevant existing conventions*, it will immediately occur to French-speaking persons to ask to what the word *conformes* (*relevant*) refers. Obviously, the intended meaning is : relevant to the present Convention. In the English text of the Draft, the words were simply : *In the absence of existing conventions* ; and I think that we could perfectly well put in the French text : *A défaut de conventions existantes*. If we keep the word *conformes*, we are obliged to give our grounds and explain it, and I suggest therefore that we should content ourselves with the words : *A défaut de conventions existantes*, which cover all possibilities.

The CHAIRMAN. — I think we could leave this point to the Drafting Committee. With regard to M. Politis' observation, I would ask the Committee to remember that I urged on Saturday that the question of the order of the articles should be considered; I insisted more than once upon this point, and I seem to recollect that it was then the unanimous desire of the Committee that the articles should follow the order in the Czecho-Slovak amendment. Two methods of re-considering the question still remain. In the first place, there is the Drafting Committee, which may say that, without altering the principles contained in the articles, these should follow a different order, and again there is the discussion in Conference. M. Politis will perhaps agree, now that he has drawn attention to the question, to leave its solution until later.

M. POLITIS (Greece; speaking in French). — It is not a fundamental point.

M. LANKAS (Czecho-Slovakia; speaking in French). — As the point has been raised, may I be allowed to say why it appeared to us more logical for the article in question to follow Article 4. It is because we considered that the question of the application of Article 4 could be dealt with in the special Conventions, and it therefore appeared to us more logical to place the article dealing with special Conventions after Article 4. The Chairman is quite right when he says that it is a question for the Drafting Committee.

The CHAIRMAN. — When the Drafting Committee examines this article, it will have before it the remarks of M. Politis and M. Lankas.

I will put to the vote the Czecho-Slovak and British proposal as just read.

The proposal was adopted by 20 votes to 5.

DISCUSSION OF ARTICLE 6

The CHAIRMAN. — We now come to Article 6, which reads as follows :

Relations between the Permanent Committee and International Bureaux.

In those cases in which [existing or] future conventions, referred to in Article 4, involve the creation of International Bureaux, these bureaux shall, in conformity with Article 24 of the Covenant, exchange directly with the Advisory and Technical Committee for Communications and Transit any useful information relating to the exercise of their functions, and submit an annual report to the League of Nations.

To this article there is a note stating that *the Conference is recommended to include the words in brackets with a view to obtaining the consent of the Parties through the medium of this Convention, in cases where this is necessitated by the terms of Article 24 of the Covenant.*

There is then an amendment by the Swiss Delegation, which I will read :

Substitute for this article the following text :

« In cases in which existing or future conventions, referred to in Article 4, involve the creation of International Bureaux, these bureaux, in so far as all the States adhering to the Convention by which they have been set up agree thereto, shall, in conformity with Article 24 of the Covenant, exchange directly with the Advisory and Technical Committee for Communications and Transit any useful information relating to the exercise of their functions, and shall submit an annual report to the League of Nations. »

The fate of this amendment appears to me to depend upon the inclusion of the words between brackets [*existing or*].

If these words are not inserted, the Swiss Delegation would agree to the text of the article; and it is for this reason that I think we should be wise to discuss the question whether these words are to be included or not.

M. CARLIN (Switzerland; speaking in French). — Following the suggestion made by the Chairman, I should inform you that the occasion for the Swiss amendment now

before you would arise only if the words between brackets in Article 6 were maintained. If then the Committee, and subsequently the Conference, decided that these words were to be expunged, there would no longer be any occasion for the Swiss amendment. It would give me great satisfaction to be able to withdraw it, and thus help to expedite the work of the Conference by not occupying your time.

I will summarise my remarks. If first the Committee, and then the Conference, decide to delete the words between square brackets [*existing or*], there will be no longer any motive for the Swiss amendment. If, on the other hand, these words are kept, I must retain the right to take up and explain my amendment.

M. LANKAS (Czecho-Slovakia; speaking in French). — I very much regret not to be able to support the view taken by the Swiss Delegate. I must say that I do not quite understand the reasons for which the Swiss Government objects to the International Office exchanging with the Advisory Committee any useful information relating to the exercise of its functions, and submitting an annual report to the League of Nations. In my view this provision does not in any way impinge upon the competence of the Central Office; whilst it appears to me perfectly natural that a central office dealing with a question so important as that of the Bern Convention should be in touch with the League of Nations. Moreover, if you read over Article 57 of the Bern Convention, you will see that the Central Office is competent as follows :

In order to facilitate and assure the execution of this Convention, a Central Office of International Transport shall be set up, with the following functions :

1. To receive communications from each of the Contracting States and each of the Railway Administrations concerned, and to notify them to the other States and Administrations;
2. To collect, co-ordinate and publish information of every kind which is of interest to services connected with international transport;
3. To pronounce judgment at the request of the parties in any litigation against railways;
4. To investigate requests for the modification of this Convention, and, whenever occasion shall arise, to propose to the various States the summoning of a new Conference;
5. Lastly, to facilitate financial business necessitated by international transport services, collection of debts, etc., between the various administrations.

You will see, then, how important is this Central Office, and how near are its functions to those of the Advisory Committee, according to the Scheme of Regulations which we shall adopt in a few days. I believe it to be necessary that some degree of communication should be established between the Central Office and the League of Nations. Surely the Central Office, which has accomplished so much towards international progress, cannot see in the *Green Book* any attempt to detract from its prerogatives and its competence; and it is for these reasons that I consider that the Swiss Government and the Central Office might very well accept these provisions.

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — May I be allowed to say a few words with regard to the subject of M. Lankas' speech? Considerable confusion appears to me to have arisen. In Article 6 a general mention is made of central offices, of international bureaux. There are not only the four offices at Bern,—namely, the International Office of Posts, that of Telegraphs, that of Literary, Industrial and Artistic Property and our own Central Office, but there is also the International Office of Weights and Measures at Sèvres. There is another International Office at Paris, whilst at Rome there is the International Office of Agriculture. There is one at Brussels, and yet another at The Hague. Then at Berlin there is, I think, the Anti-White Slave Traffic Office. In fact, there are eleven or twelve international offices. I believe that the Central Office, as such, is not a factor at all in the amendment proposed by the Swiss Delegation. The Central Office is here in quite an independent position. I wish to give a thorough explanation in order to avoid any misunderstanding. The discussion will have reference not to the Central Office alone, but to all the international offices at present in existence.

M. CARLIN (Switzerland; speaking in French). — I much regret that the remarks of the Czecho-Slovak Delegate should have led to a discussion which I should have

liked to avoid. M. Lankas has left entirely out of account Article 24 of the Covenant, which reads as follows :

There shall be placed under the direction of the League international bureaux established by general treaties, if the parties to such treaties consent.

There is no question of the Swiss Government, which has joined the League of Nations, setting up opposition to that article; it is precisely in view of its terms that we consider that the words added to Article 6 of the Draft Convention, and placed between brackets, are perfectly unnecessary.

I should also like to emphasise the fact that I am not speaking on behalf of the Swiss Government as such. I am speaking on behalf of the Swiss Government in its capacity as supervisor of International Offices at Bern; and as M. Étienne has told you, there are not only those at Bern but others as well,—one at Rome, one at Brussels, one at The Hague and one at Paris. All these are included under the terms of Article 24 of the Covenant. The existence of this Article 24 of the Covenant is the very reason for which I propose formally that you should consent to the deletion of these words. For Article 24 of the Covenant the question is already settled.

M. CARACOSTEA (Roumania; speaking in French). — May I be permitted to propose a modification to Article 6? I have been wondering why the text only refers to Article 4. Other articles are equally concerned; and this fact prompts me to suggest the following text :

In those cases in which existing or future conventions referred to *in the preceding articles* involve the creation...

M. LANKAS (Czecho-Slovakia; speaking in French). — I venture to repeat M. Etienne's own saying; there is indeed a confusion at the moment. There is no doubt that Article 24 of the Covenant does apply to all international offices, but there is also no doubt that our Convention can only apply to one or at the most two—I maintain only one—international office, and that is the Central Office of International Transport at Bern. Our Convention is, as you know, purely a railway convention; it has nothing to do with postal services. Accordingly, Article 6 cannot possibly apply to the International Post Office, the Central Office for Literary Property, or to the Office which has its seat at Rome. That is why I cannot for the moment see my way to accept the Swiss amendment.

M. CARLIN (Switzerland; speaking in French). — That is not under discussion.

M. LANKAS (Czecho-Slovakia; speaking in French). — As the amendment has been submitted to us, I consider it my duty to speak on the subject. M. Carlin's draft stipulates, as a condition of exchange of information, the consent of all the participating States. This means that it would suffice for a single State to say "No", for it to cease to be possible to apply the terms of Article 6. What I fail to understand is why the International Office at Bern should oppose the exchange of useful information relating to the exercise of its functions, and should refuse to submit an annual report to the League of Nations. It is pointed out by the Swiss Delegate that, according to the terms of Article 24 of the Covenant, all International Bureaux already established shall be placed under the direction of the League, subject to the consent of the Parties. This need not in any way prevent us from taking a step further and declaring,—although, according to Article 24, the consent of the Parties is necessary,—that the International Office is to exchange information and to submit a report. Surely we could insert a similar clause in Article 6; the provision appears to me quite harmless, and I do not understand why objection should be raised to it.

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — May I reassure M. Lankas and repeat what I have said. Article 6 does not refer specially to this Office. There is also the International Tariffs Office at Brussels, and there may be others. This article must be read as applying generally.

As regards the relations between the Central Office and the League of Nations, I can again reassure M. Lankas. We have been in touch for the last year with the Organisations of the League of Nations; in particular, we received a visit from Dr. Nitobé, Director of the Section of International Bureaux of the League of Nations. The extract from the historical notice which I read to you at the plenary meeting held on March 30th last (1) was drawn from information which we had just supplied to Dr. Nitobé, accompanied by a detailed statement as to our financial position. I may add that when I left Bern, our Headquarters Report was at that very moment leaving the press, and the Section of International Bureaux of the League of Nations has by this time received a copy of it. You will observe that these relations do indeed exist; and I desire only one thing,—that they should develop; moreover, they are relations of the most friendly kind.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As M. Etienne said, there is here a question of principle which is already settled by the terms of Article 24 of the Covenant. I do not suppose that the delegates here at Barcelona have asked for the consent of their respective Governments on the subject, or have received it. Would it not be well then to abstain from further discussion for the moment, seeing that, in my opinion, no essential question is involved. Have we not been told that there are already relations and that these will continue to grow? I cannot understand any other point of view, and I therefore propose that a vote be now taken on Article 6, the words *existing or* being omitted.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — Upon what question is it proposed to vote? Simply upon the omission of the words between brackets : *existing or*, or upon the whole text of Article 6 as it appears in the *Green Book*?

The CHAIRMAN. — The present idea is to vote on the adoption or omission of the words *existing or* which are between brackets in the *Green Book*, because if we omit these words, there will be no need to take a vote on the Swiss amendment.

M. LANKAS (Czecho-Slovakia; speaking in French). — I cannot understand why this provision could not be applied to the Central Office at Bern, which is an institution of the various governments. I will not speak of the Tariffs Office at Brussels, which is a railway institution bearing quite a different character. It is for this reason that I asked for an explanation; I do not wish to make a proposal, but in view of the present situation, I even wonder whether if we omitted the words *existing or*, Article 6 would have any meaning whatever. I am inclined to propose that it be omitted altogether. As, however, it is desirable that this question, which is of some importance, should receive more careful study, I would suggest that it should be dealt with by a sub-committee; I am sure that a solution would be arrived at rapidly.

M. SINIGALIA (Italy; speaking in French). — I support your proposal.

Mr. G. L. COLVIN (Great Britain). — I also support the view of the Czecho-Slovak Delegate. The question is of great importance, particularly for the working of the body which we hope to see set up, and it is most necessary that the latter should be supplied with all the information possible. The matter might be referred to a sub-committee.

M. WIELOWIEYSKI (Poland; speaking in French). — By the terms of Article 6, an obligation is created for organisations over which we have no rights whatever. Article 24 of the Covenant is invoked, but, in my opinion, this article does not accord us the right. What does it do? It says : *if the parties to such treaties consent...* This condition has not yet been fulfilled, since the parties have not yet given their consent. We cannot, therefore, invoke the article, and accordingly Article 6 should either be omitted or should be given the form of a recommendation; it should not be binding

(1) See p. 5.

as in its present form. In the French text, instead of saying *en vertu de* we might say *conformément à*, thus making the same reservation as Article 24.

M. CARLIN (Switzerland; speaking in French). — I regret that the Delegates who have spoken on the subject of Article 6 have not kept strictly within the limits laid down. It is not a question of discussing the Swiss amendment, but of deciding whether the words *existing or* between brackets in the *Green Book* Draft shall be deleted. I regret this all the more because I omitted to state the motives underlying my amendment; I intended to do this a little later. Many of the observations made, and many of the misunderstandings which have arisen might have been avoided.

Assuming that the Swiss amendment is not under discussion, it appears to me that if it is to be referred to a sub-committee, it would be desirable to put to the vote, in the first place the proposal which I made and which took the place of our amendment,—namely, the omission of the words *existing or*, and in the second place the omission of the article. In view of the terms of Article 24 of the Covenant, surely Article 6 would appear superfluous. It arises clearly from the terms in which Article 24 of the Covenant is couched, that these International Bureaux will, in virtue of the consent of all the Contracting Parties, be placed under the authority of the League of Nations; this follows on from the obligation imposed on them to submit to the League of Nations reports on the exercise of their functions.

Another point has been touched upon. We are speaking of the Transport Office only, and the Transport Office being under the supervision and authority of the Federal Council, it is surely for this body to decide the attitude which these Bureaux shall take up with regard to the terms of Article 6.

To sum up, I think that a vote should be taken first of all upon deleting the words *existing or*, and then upon omitting the article. I ask that a vote should first be taken with regard to deleting the words, because the vote upon omitting the article may be influenced according to whether the words in question are retained or omitted. I defer to the Chairman's view on this point.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The Brazilian Delegation endorses the very timely observations made by the Polish Delegate. It further accords its full support to the suggestion of the British Delegate.

The CHAIRMAN. — If the question is to be referred to a sub-committee, this must be done before the vote is taken. Would it not be well for the Swiss Delegate to make a statement to us with regard to the reasons which prompted his amendment? The Sub-Committee will then be able to consider the three alternatives,—the adoption of the Swiss amendment, the deletion of the words *existing or*, and the complete omission of the article.

M. CARLIN (Switzerland; speaking in French). — We may either decide to delete the words in question, or to drop what appears to me an unnecessary article; in either case it will be superfluous to call in the aid of a sub-committee. I feel impelled to suggest to the Chairman that a vote upon deleting the words *existing or* should be followed by a vote upon omitting the article. Upon this vote will depend the question of referring the matter to a sub-committee.

The CHAIRMAN. — There may be delegates who are in the same position as the Chairman; I should like to receive a little more information about the matter before initiating a vote on the question of omitting certain words, and even a whole article, drafted by the *Green Book* Committee.

M. CARLIN (Switzerland; speaking in French). — Since it is desired that I should state the reasons which prompted me to submit my amendment, I am only too happy to concur in your request. In the first place, in order to clear away all possible misunderstanding, I should like to emphasise the fact that it was on behalf of the Swiss Federal Council in its capacity as supervising body of the Bern International Bureaux that the Swiss Delegation presented to the Conference the amendment to Article 6,

the text of which is now before you. I am not here speaking in the name of the Swiss Government as such, I am speaking in the name of the Federal Council in its capacity as the authority which supervises and controls the International Bureaux at Bern.

As I have stated, it is stipulated by the terms of Article 24 of the Covenant that all international bureaux established by general treaties shall be placed under the direction of the League of Nations, if the parties to such treaties consent. The phrase *if the parties to such treaties consent* leaves something to be desired, and it is for this reason that we desired more exact information on the point. Are we to understand from the words *if the parties to such treaties consent*, all the parties, all the States belonging to the various associations for whose benefit these bureaux were created? If this is so, very well. But it might be inferred—we must beware of different interpretations which are sometimes unexpected—that the consent of the parties referred only to the parties concerned,—in other words to those parties which are Members of the League of Nations.

It is, then, upon Article 24 of the Covenant that the provisions of Article 6 of the Draft Convention depend. But this article only mentions the fact that the International Offices will exchange with the Advisory and Technical Committee all useful information with regard to the exercise of their functions, and will submit an annual report to the League of Nations. It does not repeat the reservation as to the consent of the parties which is included under Article 24 of the Covenant.

The Swiss Delegation considers that in order to secure more precision and to safeguard the responsibilities of the Swiss Government in respect of the International Bureaux at Bern, this reservation should be expressly mentioned in Article 6 of the Convention. It is for this reason that we proposed the addition of the words : *in so far as all the States adhering to the Convention by which they have been set up agree thereto*. In this way any misunderstanding is averted, and we have a complete parallel between Article 6 of the Convention and Article 24 of the Covenant. Firstly, the Bureaux will be under the direction of the League of Nations,—since they will be under an obligation to submit annual reports; and, secondly, it will be indicated in the same article—for the reasons which I have outlined,—this point may be of considerable importance—that this can only be done with the consent of all the States which are members of the various associations for whose benefit the Bureaux were set up.

We are not making any innovation,—we are simply asking that the reservation expressed in Article 24 of the Covenant may be mentioned in Article 6 of the Convention. I prefer to say this in so many words rather than to support the Polish Delegate's proposal, the object of which is in reality the same. In asking for the substitution in the French text of the words *conformément à l'article 24 du Pacte* for the words *en vertu de l'article 24 du Pacte*, it is intended to infer that the reservation contained in Article 24 of the Covenant is included under the terms of Article 6; but I should prefer this to be said in so many words.

These are the motives which prompted us to submit our amendment. I did not expect to have to state them here, at least for the present; I had understood that there were two proposals before us,—either to delete the words *existing or*, or else to drop Article 6, and in order to save time I had intended to postpone until later the statement which I have made to the Committee. In any event, the Swiss Delegation hopes that the Committee will see no objection to adopting the proposed amendment, which is nothing more than the logical and legal outcome of the interpretation which should be given to Article 24 of the Covenant.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I believe we all agree that it is undesirable to lay down provisions in our Convention with regard to the obligations which will devolve upon existing or future International Bureaux in respect of their relations with the League of Nations. But we must also respect the clause in the Covenant concerning the manner of placing existing International Bureaux under the direction of the League.

Could not the Committee adopt the following text :

The International Offices which are placed under the direction of the League of Nations, in conformity with Article 24 of the Covenant, as also those which will be set up in the future

by special Conventions, shall exchange directly with the Advisory and Technical Committee for Communications and Transit any information relating to their functions, and shall submit an annual report to the League of Nations.

M. POLITIS (Greece; speaking in French). — As one of those who helped to draft the *Green Book*, and basing my remarks on Article 6, I will venture to supply an explanation. It was never the intention of the Commission which drafted the *Green Book* to place existing or future international offices under the direction of the League of Nations. Besides, Article 6 does not state that these Offices are placed under the direction of the League of Nations; it simply states very naturally that these Offices will be in touch with the Advisory and Technical Committee,—and hence with the League of Nations—submitting information and an annual report. The Offices are left with all the authority which they possess at present, and which is granted them by the States signatories of the Conventions with which these Offices have to deal. The words in the article *in conformity with Article 24 of the Covenant* were simply intended to convey the fact that the terms of Article 6 were based upon those of Article 24 of the Covenant. In the hope that satisfaction may be given to the Committee, I propose simply to change the words *in conformity with Article 24*, and say *the creation of International Transport Bureaux*; this will to show more clearly that the only Bureaux concerned are those which deal with railway transport. Other existing Bureaux could hardly be touched by the remaining provisions of the article. Finally, Article 24 has nothing to do with this text, and all mention of it may be omitted.

The CHAIRMAN. — It is obvious that we cannot end this discussion to-day. I suggest that we could resume our labours to-morrow, having before us the conclusion arrived at by a sub-committee, to which I propose that there be appointed the representatives of Brazil, Czecho-Slovakia, Esthonia, Germany, Greece, Italy, Japan, Poland, Switzerland and Uruguay.

M. CARLIN (Switzerland; speaking in French). — I should not like the Committee to carry away the impression of the observations made by the Greek Delegate, and, therefore, before the meeting breaks up, I should like to say that if all reference to Article 24 of the Covenant is omitted in this Article 6, then the latter ceases to afford any guarantee whatever. The only guarantee possessed by the Federal Council in its capacity as supervising body is vested in Article 24; if all reference to Article 24 is omitted we are face to face with an impossible state of affairs.

The meeting adjourned at 1 p.m.

FOURTH MEETING OF THE COMMITTEE ON RAILWAYS

(Tuesday, April 5th, 1921, at 10 a.m.)

DISCUSSION OF PROPOSAL SUBMITTED BY INTERNATIONAL LABOUR OFFICE — DISCUSSION OF ARTICLE 6 (contd.) — NEW ARTICLE PROPOSED BY ITALIAN DELEGATION — DISCUSSION OF PREAMBLE — DISCUSSION OF ARTICLE 6 (contd.).

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

DISCUSSION OF PROPOSAL SUBMITTED BY INTERNATIONAL LABOUR OFFICE

The CHAIRMAN. — The first item on the agenda is the discussion of the *vœu* which has been drawn up and upon which a statement has been made on behalf of the International Labour Office by M. William Martin. I will read it :

The Conference on Communications and Transit,

Recognising that it is highly desirable to make the lives of the blind as normal as possible, and to assist in providing them with means for contributing to the general productiveness and for gaining their livelihood by their labour,

Recognising that the difficulties which sometimes prevent the blind from travelling by rail, and particularly the fact that they must always be accompanied when travelling, are an obstacle to the attainment of this object,

Recommends :

(a) That the national administration of bodies of public means of transport in each country should give special consideration to the position of blind workers travelling in the exercise of their vocation.

(b) That they should, in particular, consider the possibility of authorising blind workers, travelling in the exercise of their vocation, to be accompanied by a guide without having to pay two fares, since this increases the pecuniary disadvantage under which the blind labour, as compared with other workers.

(c) That they should agree to give international recognition to some form of legal certificate, which should be accepted as evidence of the status of blind worker, with a view to the concession of any facilities which it may be possible to grant.

M. von der LEYEN (Germany; speaking in French). — In Germany there exist facilities for transport for the benefit of the blind, and also for persons accompanying them, and even for dogs serving as their guides. I cannot say exactly what these provisions are, as I have not had time to acquaint myself with them, but I entirely agree with the Roumanian Delegate that it is not within our competence to adopt a resolution on this subject. However, as the question is a most important one, I think that the assembly might recommend this *vœu*; its social aim is clear and it emanates from an important organisation.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — While recognising the philanthropic character of the *vœu* presented by the International Labour Office, I cannot but support the view expressed by the Delegates of Roumania and Germany. To speak candidly, I do not think that it is within our competence to provide a solution for this question. I therefore venture to suggest that this *vœu* should be simply referred to the Advisory Committee without comment.

M. WIELOWIEYSKI (Poland; speaking in French). — I support the proposal of the Brazilian Delegation to refer the question without comment, as it is quite outside our competence.

M. LOISEAU (France; speaking in French). — In order to avoid making this seem too bald, and on account of the importance of the proposal, could we not recommend it to the favourable consideration of the Advisory Committee?

M. POLITIS (Greece; speaking in French). — I also am of the opinion that this question is outside the domain of our work. Measures have been taken by the different States on behalf of the blind as of all victims of the war, and it would be somewhat offensive for us to point out to them their duty in this respect.

M. LANKAS (Czecho-Slovakia; speaking in French). — I fully support the proposal of the Brazilian Delegate, but I am not certain whether it would not be desirable to point out, as the Greek Delegate has said, that in every country there exist special considerably reduced rates in favour of the blind, and that it is universally recognised that these unfortunate victims of the war should be helped everywhere.

The CHAIRMAN. — As the Committee appears to be unanimous on this question I propose that a sub-committee, composed of the Delegates of Brazil, Czecho-Slovakia and Greece, should meet to find a formula.

M. POLITIS (Greece; speaking in French). — There is no formula to find; the question is outside our programme.

M. BARBOZA-CARNEIRO (Brazil; speaking in French). — My proposal is to refer the question to the Advisory Committee, which will consider what subsequent steps should be taken.

M. POLITIS (Greece; speaking in French). — I think that no subsequent steps should be taken.

The CHAIRMAN. — I put the Brazilian proposal to the vote, and I propose that the terms in which the question is referred should be drawn up by the Delegates of Brazil, Czecho-Slovakia and France.

The proposal was adopted by 17 votes to 2.

DISCUSSION OF ARTICLE 6 (contd.)

We now return to the discussion of Article 6 of the Draft Convention, which was referred to a sub-committee. The Delegate of Greece, M. Politis, was asked to propose a draft text.

M. POLITIS (Greece; speaking in French). — In reply to the Chairman, I have the honour to inform him and also the Committee that we deliberated for two hours yesterday without arriving at a definite result. The last proposal which we submitted to the Sub-Committee, and which was not accepted unanimously, read as follows :

Subject to the provisions of Article 24 of the Covenant, the participating States recognise as highly desirable, in cases in which existing or future Conventions referred to in Article 5 involve the creation of International Bureaux, these bureaux shall exchange directly with the permanent Communications and Transit Committee any useful information relating to the exercise of their functions and submit an annual report to the League of Nations.

As you see, we finally expressed the terms of Article 6 as contained in the *Green Book*, in the form of a *vœu*. I think we cannot go further, and that we have made every possible concession.

If only in deference to the League of Nations, international transport offices must enter into relations with the Advisory and Technical Committee. An application for certain information might in the future be made to this Advisory and Technical Committee; it would not of course be possible to refer the applicant to the Central Office at Bern. The Committee should be in a position to supply the information.

M. LANKAS (Czecho-Slovakia; speaking in French). — I think that there should not merely be a connecting link between the central offices and the League of Nations. We consider that the *vœu* did not in any way refer to Article 24; we thought that our formula would not encroach at all on the domain of this article, and that it should not touch upon the question of the authority to be exercised by the League of Nations over central offices. I should like to say that the Delegate of Uruguay declared that this formula was unacceptable; he is not now present.

M. POLITIS (Greece; speaking in French). — Why unacceptable?

M. LANKAS (Czecho-Slovakia; speaking in French). — Because the Delegate of Uruguay said that he could accept the formula only in an obligatory form. As there is here a very important and fundamental difference, I am wondering whether we could take a definite decision in his absence.

M. CARLIN (Switzerland; speaking in French). — As regards the amendment to Article 6 which gave rise to a discussion in Sub-Committee, I am happy to be able to say that the Swiss Delegation is in a position to support the proposed text. As regards the remark of the Czecho-Slovak Delegate to the effect that at the meeting of the Sub-Committee held yesterday afternoon the Delegate of Uruguay opposed it, I really think that as he was not present at our meeting this morning, and is not present now, we may proceed and take a vote on the proposal which has been made. If we had to wait for each Delegate concerned in the question to be present, I think we should never come to an end.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I very greatly regret that I do not at all agree with the Swiss Delegate, and I ask the Committee to wait until the end of our meeting before voting on this article. Perhaps by that time the Delegate of Uruguay will have arrived. I am convinced that he was unavoidably prevented from coming to the Sub-Committee this morning and from being here in time for this meeting. I think it would be a graceful act towards him to postpone the voting for a short time.

The CHAIRMAN. — I think that perhaps as the Uruguayan Delegation is not very numerous, we might, as a matter of courtesy, wait until the Delegate is present. I propose therefore to adjourn the discussion until he arrives.

NEW ARTICLE PROPOSED BY THE ITALIAN DELEGATION

We have now to consider a new Article, 6 *a*), proposed by the Italian Delegation, which corresponds to that included in the Transit Convention. I will read it :—

Scope of application of the Convention.

Exceptions may be made in special cases to the terms of the preceding articles, in virtue of special or general measures which one of the High Contracting Parties may be obliged to take in the case of emergency affecting the vital interests of the country, it being understood that the principle of freedom of communications shall be observed as far as possible.

M. SINIGALIA (Italy; speaking in French). — The sole aim of the proposal of the Italian Delegation to insert an Article 6 *a*) in this Convention is to fill a gap which it considers exists in the Convention. Article 6 *a*) is simply a repetition of an article of

the Transit Convention; it refers to measures of security which every State would be obliged to take in the case of emergency affecting the safety of the State and the vital interests of the country. This is therefore not a new question; it is simply a matter of drafting and of uniformity with the other similar conventions.

The CHAIRMAN. — Are there any objections to the Italian proposal? If not, I propose to refer the article to the Drafting Committee.

DISCUSSION OF PREAMBLE

We have now finished the discussion of those technical articles which are to be found only in this Convention; as the other articles are of a formal nature and are similar to those in the other Conventions, I propose to return to the Preamble.

M. LANKAS (Czecho-Slovakia; speaking in French). — We withdraw the Czecho-Slovak amendment to the Preamble (1).

M. LOISEAU (France; speaking in French). — On Friday last, during the discussion of Article 1 and on the occasion of an amendment submitted by the Italian Delegation, the Brazilian Delegate put forward the suggestion to convert the Draft which we are now discussing into a uniform series of recommendations instead of preserving the mixed form, part recommendations and part Convention, adopted in the *Green Book*. I think that consideration of the Preamble also includes an examination of this question. The advantage of the proposed alteration would be in the first place to give the document which will crown our labours a clearer and more consistent form.

When I analyse the text of the *Green Book* I find that, apart from the Preamble, it contains :—

1. A list of recommendations, Articles 1, 2 and 3;
2. The formula amended by the Czecho-Slovak Delegation, which constitutes a Convention. This is the new Article 5.
3. Article 6, entitled *Relations between the Advisory Committee and the International Bureaux*. It is on this article that we must take a decision at the end of the meeting. I would beg you to note that some of our colleagues have already asked that this Article 6 should become simply a *vœu*. I am prepared to support this proposal, and I am convinced that the Delegate of Switzerland would not demur to it.
4. Finally, the articles numbered 7 to 22, which have already been incorporated in other Conventions, and which are for the most part of a formal nature.

Such is the economy of the *Green Book* Draft. It is open at the outset to one fundamental criticism, namely that it amalgamates in one and the same document—in a document which forms a single whole—and under the same heading, principles which are proposed and principles which are imposed, the principles which are proposed, in Articles 1, 2 and 3, and the principles which are imposed, in the former Article 4, now Article 5. It therefore amalgamates advisory and imperative formulas, recommendations and schemes which are to be binding. This is a defect to which I think it is needless for me to call your attention further.

I pass from formal to fundamental criticism, and I ask myself why there should be this difference between the economy of the first articles and that of Article 4. Is this justified by the difference in the contents? When subjects of primary importance are dealt with, such as passenger and goods traffic, or exchange of rolling-stock, it is merely stated that it is highly desirable that provision should be made. It was realised

(1) The text of the Czecho-Slovak amendment to the Preamble reads as follows :—
"Omit this article and substitute for it the following :—

'Principles of the Convention.

"The participating States, being desirous of applying to the railways placed under their sovereignty or authority the principle of freedom of communications, in accordance with Article 23 e) of the Covenant, concert, with a view to facilitating and developing international traffic, to the following provisions."

that the practical application belongs to the competence of States and railway administrations, with the mutual use of contractual freedom. It was rightly considered that if the Barcelona Conference had tried to bring railway matters into general legislation, it would have laid the League of Nations open to the reproach of attempting to embrace more than it could compass.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — Hear, hear!

M. LOISEAU (France; speaking in French). — Why then should we show ourselves bolder or less circumspect in the matter of equality of treatment,—a secondary one after all, at least in comparison with the first? You will note that I do not discuss the principle of Article 4. I also am an advocate of equality of treatment, and I gave proof of it yesterday by putting to M. Étienne a question with regard to individual agreements. There is nothing new in the subject of equality of treatment; it has already become a part of customary practice. It has been the subject of conventions, and it is in conformity with the interests of every State. As a rule there is no necessity to compel States to observe it. These are antecedents which ought to reassure the advocates of equality of treatment. It is, if you like, a principle to be consolidated, but not a new principle to be created. A recommendation appears to me to be as effective as an engagement properly so-called, because an administration which felt the temptation to evade the rule of equality of treatment would be restrained as much by the implicit disapproval which would result from the failure to observe a solemn recommendation like those contained in Articles 1, 2 and 3, as by the prospect of having to defend a lawsuit, to say nothing of the fear of reprisals.

I will return to the question of special agreements, which is the keystone of the system. I showed yesterday, and M. Étienne agreed with me, that, when it is a question of special agreements, that is to say, when a rule has been broken, you are content with a prohibition without sanction or with an inadequate sanction. Why not remain content with a recommendation for the rule itself? So long as you have not provided a more effective penalty for the infringement of the rule, you will not protect it, you will not have passed legislation. What you will have done reminds me, if I may say so, of M. Jourdain, who wrote prose without knowing it; you will simply have been recommending without trying to do so.

I will now pass to the direct advantages of a generalised system of recommendations. In the first place it enables a homogeneity to be given to the idea and form of the document which will result from our labours. We shall avoid having recourse to a mixed formula, of which I know but few examples, and which I think will not have many imitators. Finally, we should thus avoid wounding sensibilities and giving rise to dissensions, and perhaps to opposition, which are liable at any time to be aroused by a scheme for a general and reciprocal engagement, when it is submitted for signature to the Governments, and above all for the approval of Parliaments. Even within these walls you have had a foretaste of these dissensions and this opposition,—of the circumspection, to say nothing more, with which the Committee has received the mere statement, in the text of the Italian amendment, of the terms *undertake to adopt*. But in my opinion we ought to cast our eyes beyond these walls. We all know that unless Governments approve and unless Parliaments ratify, our ephemeral legislative work will be honourable but vain. Are you indeed sure that the idea of general international conventions, even, as here, in the form of partial conventions, has gone beyond the stage encountering obstacles? I venture to doubt it. On the other hand if the Conference confines itself to the system of recommendations, you will avoid offending anyone, and you will have every likelihood of not appealing in vain to the goodwill of all.

There is a term which is used and which is sometimes abused, and which for my part I have not once heard since the beginning of the Barcelona Conference; that term is *public opinion*. This proves, by the way, that we do not merely court popularity. As I am not courting anyone else either, I shall not go so far as to say that public opinion is following the work of the Conference with impassioned interest. However, it is interested in it. Why? Because it expects practical results; it desires to emerge from this distressing condition, I was about to say this state of chaos, which has resulted

from the war and which is putting the patience of travellers, consignors and the public in general to a protracted trial.

Where has public opinion hitherto found any practical results, and whence does it expect them? It expects them—in particular as regards immediate or impending results—from the conclusion of *inter se* agreements by Governments and railway administrations. Before the war there were manifold examples of these agreements. The Convention of Bern was not the only one; it devised and prepared a better formula for international circulation. Since the war we have had examples of this. In this connection I am thinking of the agreement which resulted in the institution of the Simplon-Orient Express, which does honour not only to the French Paris-Lyons-Mediterranean Company and the Sleeping Car Company, but to a large number of administrative bodies which are concerned in the agreement. How can I help thinking of this when I meet in this hall most of my colleagues on the Organising Committee of the Simplon-Orient Express—M. Hanrez, Delegate of Belgium; M. Caracostea, Delegate of Roumania; M. Politis, Delegate of Greece; M. Sinigalia, Delegate of Italy; and my friend M. Avramovitch, Delegate of the Serb-Croat-Slovene State? Let us leave as much free play as possible to this initiative on the part of professional men and men of goodwill. Do not let us attempt to impose too rigid a text upon them. Let us, like public opinion, have confidence in them, and let us remind ourselves also that what public opinion expects of us is in the first place some prelude to an international code,—but a code which calls for the utmost caution, as has been done in Articles 1, 2 and 3. Public opinion also expects from us general guidance and instructions, and, I will add, official public and solemn encouragement of the efforts which have been made up to the present, and which are still being made, to restore traffic to its normal course, and thereby to reassure the various world interests concerned.

I will now draw to a close. I do not wish at present to give to my remarks the precise form of an amendment; I think it would be premature to do so until you have, so to speak, taken up a definite attitude, as regards the suggestion which was made in the first place—and I congratulate him upon doing so—by the Delegate of Brazil. I will therefore confine myself to asking the Committee to take a decision of principle on the following question:—Instead of leaving the provisions contained in Annex 4 of the *Green Book* in the form and with the title of a Draft Convention, would it not be better to convert this Draft into a series of texts involving recommendations only, in so far as the composition of these texts, as discussed by the Committee, is left untouched.

M. LANKAS (Czecho-Slovakia; speaking in French). — I greatly regret that I cannot support the case so brilliantly presented by the Delegate of France. I also regret that the French Delegate is here adopting an attitude so different from that adopted by the other French Delegates on the Commission of Enquiry at Paris. No doubt if all the Conventions which we draw up here contain nothing but recommendations and *vœux* they will certainly be approved by Parliaments and ratified by Governments; but I should like to know if the only object of the Barcelona Conference, which is involving our Governments in vast expense, is to enable us to come to an agreement upon texts which have no other value than that of recommendations or *vœux*. It would be most regrettable if we gave our Convention the form of a mere recommendation. Moreover, the Delegate of the International Labour Bureau pointed out to me that the word *recommendation* is taken from the chapter in the Treaties of Peace which regulates the working of the Labour Office, and that in that connection this word *recommandation* has a totally different meaning and a totally different scope from those which we are giving it in the present Convention. It is almost binding as a Convention itself, whereas in the sense in which we use it, not only does it lack this scope, but, to speak plainly, it has no definite meaning at all. In my opinion, in a field as far-reaching, practical and important as that of railways, we should reach an agreement on at least a minimum of obligations. Allow me to point out that you have yourselves settled the question; you rejected the Belgian amendment, the object of which was to lessen the scope of Article 4, concerning tariffs. You adopted the obligatory formula. Why abandon this formula for that of a recommendation? The Railways Convention must contain a nucleus of obligations which will regulate this important matter in the future.

The Delegate of France cited Article 4 in the *Green Book*, and pointed out that it did not contain any sanctions. I would point out to him in my turn that this text is taken from the Bern Convention, and that in the fifty years during which it has been applied, it has never given rise either to disputes or to difficulties. I did not say this at the preceding meeting, in order to avoid lengthening the debate, but in my view, the sanction is clear. As regards the sphere of the Bern Convention, any reduction in tariff rates is expressly prohibited, and any reduction granted by special treaties is *ipso facto* null and void. This formula is sufficient to give anyone the right to appeal to the courts of any country, and these courts would have to find that a reduction of this kind, being contrary to the Bern Convention, which has the force of law, is null and void, and would have to give an award in favour of the plaintiff.

The sanction therefore is quite clear. It would be most advantageous to insert this formula in a world-convention on railways. If the formula appears in our Convention, even those States which are not parties to the Bern Convention will have the right to bring before the courts any special agreement granting special advantages. I will not combat the arguments presented by the French Delegate in support of his case; I will only venture to ask you not to make this change in the scope of our Convention, and to retain the obligatory formula for Article 4 and Article 5.

M. WIELOWIEYSKI (Poland; speaking in French). — I think that the essential point for us is to come to a decision. Public opinion, particularly Spanish public opinion, if I may believe this morning's press, is greatly interested in our labours. I fully understand the point of view of the Delegate of Czecho-Slovakia, who, adopting the same view as myself, would like to obtain complete results in respect of railways; but my wish is above all to obtain some result. I shall therefore give my support to the French motion, because I prefer something which is not perfect, but which will secure the signatures of all, to something which has every appearance of perfection, but which is in danger of not being signed. I have spoken of public opinion, and I think that nothing could be worse than to adopt here, in general, agreements which no-one would ratify, or which would only be ratified by a minority of countries. In the interests of the authority of the League of Nations, too,—an authority which would be weakened if a Conference held under its auspices did not achieve any result—I will ask you, speaking from a practical standpoint, to vote for the motion submitted by France, in agreement, I think, with Brazil. If we prepare something practical, something concrete, and recommend it, all will accept it, but if, on the other hand, we prepare something which is neither practical nor concrete, and attempt to impose it, our provisions might remain a dead letter. I prefer something imperfect but perfectly alive to something perfect but imperfectly alive.

M. SINIGALIA (Italy; speaking in French). — I greatly regret to see that a discussion is beginning again now which was debated at length when this Draft Convention on Railways was drawn up. Almost the same question arose then, and everyone expressed the opinion that it was impossible only to make recommendations in a Convention such as this, which may be said to be perfectly innocuous. Consequently, I support with all my heart what the representative of Czecho-Slovakia has said. I consider that it was quite useless to summon all of us here simply to express recommendations, which we could have done just as well without moving at all. The Delegate of France cites in support of his case the precedents of the Bern Convention and the institution of the Simplon-Orient Express. I reply that the Bern Convention, as well as the Simplon-Orient Express Convention, were the subjects of Conventions between Governments and not between railway administrations. In accordance with the terms of these inter-governmental conventions and within the sphere of their competence, the railway companies take the necessary measures to apply the principles laid down by the Governments, but the principles perpetuated in these conventions should not originate in the will of the railway administrations. The Governments alone control the guiding principles of railway policy, and the railway administrations, whether State or not, cannot ignore the Governments. In those countries in which railway administrations are in private hands, the interests of these administrations may not happen to concord with the general interests of the State, and in countries in which the railways are operated

directly by the State, the State as an administrator cannot be dissociated from the State as a Government in any agreements which are made.

I will add that Article 23 *e*) of the Covenant states that Members of the League *will make provision to secure and maintain...*, but if we simply make recommendations, I do not see how Members of the League will be able to make these necessary measures. In order to do so there must be engagements undertaken between the Contracting Parties. If we limit ourselves to recommendations, I think that we shall not fulfil the obligation which derives from Article 23 *e*) of the Covenant. I repeat therefore that I strongly support the proposal of the Czecho-Slovak Delegation, which appears to me wholly logical, and which I think fulfils the intentions of the authors of Article 23 *e*) of the Covenant.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I have listened with interest to the arguments of the Czecho-Slovak and Italian Delegates. I am sorry to say that they have not convinced me; I adhere to the view that I expressed during the discussion of Article 1. We proposed to change the Convention to a recommendation and not to a mere *vœu*, because the term *recommendation* is stronger than the term *vœu*. When I turn to Article 405 of the Treaty of Versailles, the terms of which are most precise and clear, I find that :

... Each of the Members of the Labour Conference undertakes that it will, within a period of one year at most from the closing of the session of the Conference... bring the recommendation or Draft Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

This appears to me also in complete conformity with Article 23 of the Covenant, which enacts that Members shall make provision with a view to facilitating transport traffic.

The recommendation which we should make to the Governments would enable them to pass Conventions *inter se*, and it would be these Conventions which would constitute these very provisions which the Governments are to make in virtue of Article 23 of the Covenant. We all agreed that it was impossible to make a convention or contract of world-wide scope in respect of railways. Why? Because although this contract is applicable to Europe, it cannot be applied to the other continents, and if it cannot be applied to the other continents, then it cannot be world-wide. Let us therefore make a recommendation, let us give guiding principles to every Government, let us weld a framework applicable to Europe, Asia, Africa and America; but let Europe tomorrow, if she wishes to do so, make a Convention in the strict sense of the word,— a binding contract. Let America develop in proportion to the progress of her railways, and when she has reached a stage of railway development equal to that of Europe, in a few years, in a few generations perhaps, let us make a world-convention applicable everywhere and acceptable everywhere.

I should like to make my views quite clear on the point that, if this Convention is anything but a recommendation, if it does anything more than give guiding principles to the different Contracting Parties with a view to the subsequent agreements which they will conclude *inter se*, then a Convention cannot be accepted by the countries of South America; in this matter I think I am interpreting what will also be the view of the Delegate of Chile. If we make a Convention in these conditions, I cannot see why all of us should not agree to change it to recommendations. Then, if we are all in agreement on this point, let us be logical and agree as to the form; and, as the Delegate of Poland said, we shall achieve a definite result much more quickly, because no-one will feel any misgivings. These are the only remarks which I wished to put before the Committee. But I should like to state categorically that Brazil is not opposed in principle to a text drawn up in the form of a recommendation. What I cannot accept is the inconsistency that exists between the title of the instrument before us and the substance of the actual text of that instrument.

The CHAIRMAN. — May I ask the indulgence of the Committee to intervene in the discussion? I am sure the Committee will acquit me of any desire to tie up the countries too tightly. I think what I have said has made clear my view on that point.

As a former railway man, I have all a railway man's dislike to obligations, and all a railway man's willingness to enter into understandings; but I should like the Committee to consider what it is proposing to do here. You have already altered mandatory instructions into recommendations. I admit there is very little mandatory left. But supposing you completely alter this Convention into a series of recommendations; I would then ask you to consider what the effect will be on public opinion. Would it not be said that the railways alone—those railways which have always been able to enter into agreements much more binding than this—have failed to come to anything but a series of recommendations? I beg the Committee, before it takes such a drastic step as this, to consider the effect it will have upon public opinion.

Mr. COLVIN (Great Britain). — I will explain very briefly my views on this proposal. It has been sprung upon me without any warning, and I may not be alone in wishing that it had been possible to give us a longer time in which to consider all the bearings of this particular proposal. At the same time I have no hesitation in saying that I oppose the proposal. The Railways Convention can perhaps be criticised on the grounds that it does not contain very much, and I am certainly strongly against weakening whatever force it may have by changing its form to that of a Recommendation. Article 4 at least does contain a definite and clear-cut principle which may serve as a guide to the League of Nations in judging disputes and in helping to shape the international policy of railways. Do not let us weaken this principle by degrading this document from the dignity of a Convention to the humbler status of a Recommendation. Reference has been made to public opinion. I believe public opinion does expect something definite on the subject of railways from the Barcelona Conference, and I do not think public opinion will consider that it has received anything of much value if it learns that the best we can do is to pass a simple Recommendation. I believe the public think that the time for pious opinions has passed and that the time for action has arrived.

M. LANKAS (Czecho-Slovakia; speaking in French). — I should like to thank the Italian and British Delegates for having supported my case, and I should also like to express my great astonishment at the fact—a totally new one to me—which I have learned from the lips of the Polish Delegate, namely that we might possibly fail to secure the support of the majority of the States for the Draft Conventions. I should like to point out that the *Green Book* has been in the hands of the Governments for several months—about six months, I think—that they have all studied it and had it examined by Committees and by Chambers of Commerce; in France itself a special Committee was appointed for this purpose. We have not strengthened the binding force of this Draft; we have even weakened it still more, and I cannot understand why the delegations which are so sure that their Governments would not ratify it did not impart their opinion at the outset, as I myself had no hesitation in stating at the very first meeting that my Government had instructed me to accept the *Green Book*. Moreover the Brazilian Delegate declares that he would accept the form of a recommendation as laid down in Article 405 of the Treaty of Versailles. I should like to say that if we give our recommendation exactly the same form as the recommendations concerning the organisation of labour, I will accept it, because it is the same. But I should like to point out that we shall have to do everything over again, because we must take up another point of view. We shall have to prepare a thing which is completely new. I very greatly regret to have to remind the Delegate of France that Article 379 of the Treaty of Versailles speaks of General Conventions on the International Regime of Transit, Navigable Waterways, Ports and Railways. I do not hesitate to say, now that I am forced to do so, that I have no doubt that the Convention drawn up here will probably supersede certain clauses of the Treaty of Peace. The distinguished jurists who are taking part in our Conference will have to consider the question whether the Convention that we are preparing, which will be called a Recommendation, is indeed that which is laid down in Article 379.

The Convention is weakened still more by Article 5, which leaves full freedom to all the Governments of the world and allows them to manage their affairs in their own way. I do not know whether there is anything in our Convention which the States

of America cannot accept. Can they be afraid that it will not be ratified by their Governments? I think—and I am expressing a personal opinion—that it contains nothing which can prove unacceptable to non-European countries. I place strong reliance on the proposals made by the Delegates of Italy and the British Empire, and I urgently beg the Committee not to change the form of our Convention, or to abandon what in German is so aptly called the *Schönheitsfehler*, and to accept it in the form proposed in the *Green Book*.

M. SINIGALIA (Italy; speaking in French). — I should like to emphasise one of the arguments put before you by the Delegate of Czecho-Slovakia, in reply to the misgivings expressed by the Delegate of Brazil. It is feared that this Convention cannot be applied to the whole world in every respect. If I remember aright, this question was considered on several occasions, and even settled, at the time of the discussion of the various articles; reservations were made which give entire satisfaction to all, and which are calculated to allay the fears of the Brazilian Delegate. As I am speaking, I will venture to draw the attention of the Committee to the great importance of the proposal which has been made, particularly as was very truly stated with regard to public opinion. As we have so little time to consider this question thoroughly, I think it would be well to postpone the decision, in order that all of us may realise the consequences which may be involved and the effect on the other Draft Conventions, because we may be asked to extend this system to all the Conventions. I therefore propose that the discussion be postponed.

M. HSU (China). — I have listened with very great interest to this debate. It appears that some of the delegates would prefer to make this Convention into Recommendations, but according to the Convention we must make a Convention, not Recommendations. When we examine the Draft, we find that Articles 1, 2 and 3 are merely recommendations, while Articles 4 and 5 impose strict obligations; our Draft is thus already partly recommendation and partly convention. This should make it acceptable to all nations. It does not matter if we call the whole a Convention, because in Articles 1, 2 and 3 we simply say *agree to recognise as highly desirable*. These articles concern the treatment of passengers and goods and the interchange of rolling-stock. Article 4 deals with tariffs. In view of the fact that many railways are privately owned, if we change Articles 1, 2 and 3 into strict obligations we shall meet with failure. In Great Britain, for instance, all the railways are privately owned, and I think it would be impossible for the British Government to interfere with their operation. It is a different matter in countries where the railways are owned by the State. I therefore favour the adoption of the Draft as it stands, without changing what are new recommendations into obligations or *vice versa*. I therefore second the proposal of the Delegates of Great Britain and Czecho-Slovakia.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I have no intention of dealing with this question fundamentally. But it is a very serious one, and we should reflect very carefully before stating a final opinion.

The *Green Book* forms an excellent basis, but, like every work of man, corrections and additions must be made to it. Having made these general observations, I venture to propose that the discussion of this subject be adjourned until the next meeting, in order that all the delegations may consult their chief delegates. It is true that we have the power to deal with these questions in our special Committees, but I think that the question which is occupying us at the moment is of such importance that the chief delegates should be called upon to state their views. Our duty here was to make the situation clear. We have done so; many important observations have been made on all sides. We may therefore, I think, leave the matter there for today and resume this discussion tomorrow.

The CHAIRMAN. — I also propose that we should not take a vote on this question today. It has come to us somewhat suddenly, and without any warning except for the previous speech of the Brazilian Delegate. It is a matter of very great moment to alter this Convention into a Recommendation. At the same time I think it would

be undesirable to stop the discussion. Therefore, if you agree, I would propose that we continue the discussion on the understanding that we shall not take a vote until tomorrow.

M. EDWARDS (Chile; speaking in French). — The Chilian Delegation is of opinion that the proposal made by the French Delegation and the reasons given by the Polish Delegation are very just. Indeed, as the Chairman has said, although the railways have been able to undertake engagements of a more binding and more comprehensive nature, these engagements were not of a world character. Moreover, that part of the Draft which constitutes an engagement is not new; it was already laid down in Article 23 of the Covenant. However, I too must state that the Chilian Delegation can accept the name *Convention* for the articles in their present form; but as I stated at the beginning of my speech, we think that the most suitable title for them is *recommendations*.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I will say in reply to the Chilian Delegate that we are in no way afraid of the title *Convention* which is proposed for the Drafts which we have discussed. But we consider that it is more logical, and that it is in the interests of the League of Nations, to change them to *recommendations*. In our opinion the title *recommendations* is more in conformity with the text. It is also in the interests of the League of Nations, because a Convention which only contains recommendations will inevitably be criticised. It will be said that the League of Nations presents under the form of a contract a thing which in reality is not a contract.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I stated at the beginning of the Conference that there were differences of opinion. Some delegations stated that they were not authorised to treat the Draft Convention in the *Green Book* otherwise than as a preliminary draft to be discussed in this Conference, and to be referred to another Conference which might perhaps make Conventions.

My view is quite different. We have come here with full powers from our Governments to deal with the question which forms the subject of our meeting. We are authorised to make Conventions and not mere recommendations. I regret that this question was not brought up at the outset in Conference. Long and fruitless discussions would have been avoided; I consider that to make recommendations is equivalent to doing nothing at all. This is not an academic conference. We are the representatives of nations come from afar; the States which sent us have gone to expense and have made sacrifices. They have not done so simply for the purpose of theoretical discussion. If the question had been put clearly at the outset in respect of transit, railways and navigable waterways, each of us would have consulted his Government, and we should be in a position to take a decision. My view is that we ought to conclude Conventions or to make definite recommendations, but that we should not confine ourselves to a draft to be submitted to a subsequent conference.

I repeat, we have not come to take part in academic but in technical discussions; all these questions have already been considered. Our aim should be the signing of the Convention, by which each country will renounce part of its authority. The question was put in this form as regards the international bureaux. Are we all prepared to renounce part of our authority as nations, to make the mutual sacrifices called for by the solidarity which should be the basis of our international deliberations since the signing of peace? I think that we should set aside the individual points of view which have sometimes divided us.

M. SINIGALIA (Italy; speaking in French). — The Delegate of Brazil pointed out that the Draft Convention is somewhat lacking in homogeneity. I share his view. I also consider that this Convention is not homogeneous; it is divided into two parts, one containing recommendations, the other containing engagements. It is with a desire to be logical that the Italian Delegation proposed, at the beginning of our labours, that the first articles of the Convention should be transformed into articles involving engagements, and not merely recommendations. If it has not been possible to attain this object—and I regret this as much as the Brazilian Delegate—it is to a certain extent

his fault, because he did not accept the Italian proposal. No one, however, would be happier than I if, through a desire to be logical, the first articles were made to conform to Article 4 and to the other articles which involve engagements. As I have not been able to obtain all that the Italian Delegation would have desired, I am resigned, I have accepted this mixed form which has resulted from the discussion; but I maintain my view as regards the character of the Convention which is to be the result of our efforts.

M. CARACOSTEA (Roumania; speaking in French). — I ask you to support our distinguished Chairman's proposal to postpone the solution of the question which has been raised, if not until the plenary meeting, at least until tomorrow. We are technical delegates, and I think that this question somewhat exceeds our competence. We need to consult our chief delegates.

M. LOISEAU (France; speaking in French). — I support M. Caracostea's proposal, which is also that of M. Avramovitch.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I am sorry to have to occupy the attention of the Committee for a few moments more, but I should like to tell the Delegate of Italy that if I did not support his view as regards Articles 1, 2 and 3, it was for the very reason that we cannot possibly draw up a definite contract. Brazil could never accept an invitation to which you may, if you please, give the title of *convention*, but which at bottom will remain a *recommendation*. We do not object to the adoption of the word *convention* if the text stands. We wished to point out what seemed to us illogical. I support the proposal of the Chairman, which has been seconded by the Delegates of Roumania and France.

The CHAIRMAN. — I think the delegates have expressed their views sufficiently to enable them to confer with their principal delegates; the only difficulty is that we have no specific amendment before us. Perhaps it would be sufficient to settle the principle tomorrow and the discussion could be continued now; for the moment we can consider as the amendment the deletion of the words *are agreed upon... to this end* in the last line of the Preamble and inserting *recognise as highly desirable*, and also that the word *Recommendation* should be substituted for the word *Convention*.

M. LANKAS (Czecho-Slovakia; speaking in French). — That is not a proposal on your part, Mr. Chairman; it is not a proposal, it is simply a formula which can be discussed.

M. POLITIS (Greece; speaking in French). — If it were adopted, it would involve the omission of all the following articles,—8, 9 and so on.

The CHAIRMAN. — That is a question which may be dealt with later. Obviously, if this change is decided upon, Article 7 and the following articles may be omitted.

M. WIELOWIEYSKI (Poland; speaking in French). — This is a question of a Convention. Whether this Convention has the character of a recommendation or of an obligation matters little; the point is that this is a Convention, and I do not think that the title *Convention* can be changed to that of *Recommendations*. The question is whether we should put in the text itself *The High Contracting Parties undertake... or simply, consider as highly desirable...*

The CHAIRMAN. — With your permission we will return to the discussion of the Preamble at our meeting tomorrow.

DISCUSSION OF ARTICLE 6 (contd.)

We will now resume the discussion of Article 6, which was reserved at the beginning of this meeting.

M. LANKAS (Czecho-Slovakia; speaking in French). — We submitted this article to the consideration of a Sub-Committee, and yesterday, with M. Sinigalia in the Chair, we discussed, and in a spirit of conciliation arrived at an agreement on a text which was in the nature of a compromise. I proposed to wait until the arrival of the Delegate of Uruguay in the hope that he would accept this text, which would thus be unanimously adopted.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I thank the Chairman and my colleagues for having been so good as to wait for me before taking a decision on the point which we discussed yesterday. As I said in Sub-Committee, to make a recommendation to an international office does not concord the idea of a Convention signed by representatives of States. I understand that a separate *vœu*, outside the Convention, is, for instance, to be sent by the Advisory and Technical Committee, but I cannot understand why a request made to any office whatever, however important and authoritative, should be included in a Convention. The article, as submitted, was only disputed by Switzerland, not in the capacity of a State, but as the supervisor of the Central Office at Bern. We endeavoured to arrive at a settlement with Switzerland in this capacity, but we did not succeed. For this reason I shall adopt a more radical standpoint and ask for a provision referring to the future organisation of the Central Office to be included in the Railways Convention, stipulating that this Office shall be placed under the authority of the League of Nations, either automatically when the Convention has been signed, or by delegation, through the Conference or the Council. I will therefore propose, in the place of that of my colleague of Czecho-Slovakia, a text which may perhaps secure the support of the majority :—

For information regarding the exercise of the functions of those International Railway Bureaux or Offices which already exist or which may be established in the future, as also for the regulation of the relations between these Bureaux or Offices and the Advisory and Technical Committee, the Council of the League of Nations shall, at the proper time, take the necessary measures, in accordance with the terms of the present Convention and other general or special conventions on the same subject.

My idea is that there is no obligation at present either on the International Office, or on Switzerland as supervisor of this Office. We wish all the countries which are to sign the Convention to place themselves under obligation to entrust the League of Nations with the control of all the offices which exist or may exist. In this way we shall not place Switzerland in a difficult position, and we shall not abandon any part of our authority. I cannot agree that we should make a recommendation, *vœu*, or request to any organisation whatever which depends upon a group of nations.

M. SINIGALIA (Italy; speaking in French). — I understand, and I might add that I share the anxiety of our colleague as regards the relations between the signatory States and the central offices, which, whatever their importance, are not, in fact, of a sovereign character; but I think this anxiety may be met by the introduction of a small amendment in the text now before us. We might say,—I do not give a text, I express an idea :—

Subject to the provisions of Article 24 of the Covenant, the High Contracting Parties recognise as highly desirable that instructions should be given to those offices in order that they may exchange directly with the Advisory Committee for Communications and Transit all information...

These instructions would, of course, be given by the signatory States. This text might perhaps allay the disquietude which is felt. The signatory States of the Conven-

tion would themselves give instructions that the offices placed under their authority should exchange with the League of Nations all useful information and annual reports. The provision would not depend upon the will of an international bureau, but would derive from the will of the States.

M. CARACOSTEA (Roumania; speaking in French). — Before taking my decision, I should like some small information from M. Étienne. According to the Bern Convention, is a unanimous vote necessary for the adoption of a Resolution so important as this, or merely a majority vote?

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — Two special cases must be distinguished,—that of our periodical conferences and that of our relations with contracting States. As regards periodical conferences, decisions are taken on a majority vote. As regards questions which relate to the contracting States as a whole, and which in the natural course are transmitted to them by the Swiss Federal Council, a unanimous vote is necessary. This contingency arises, for instance, in the case of requests for the admission of new States. These requests are addressed to the Federal Council, which forwards them to the Central Office for consideration; the Central Office makes itself acquainted with the details of the railway systems and so forth, and prepares a report which is sent to the Contracting States, together with the request of the new State. A majority vote of the contracting States is requisite for the final admittance of this State.

I take this occasion to say that at the Central Office we consider that the reservation, made in favour of the parties, mentioned in Article 24 of the Covenant, refers to the contracting States of the Bern Convention. It is a point which should be made quite clear, in order to avoid any confusion between the contracting States which are parties to the Bern Convention, and the States Members of the League of Nations.

M. CARACOSTEA (Roumania; speaking in French). — But does the question whether the international offices are to be placed under the authority of the League of Nations require a unanimous or only a majority vote?

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — The procedure would certainly be as in that for requests for admission; a unanimous vote of the contracting States will be necessary.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Yes, before the meeting of one of your conferences; but when a conference has once met, do you think it is possible to place the office under the authority of the League of Nations?

M. ÉTIENNE (Director of the Central Office of International Transport; speaking in French). — If it is a question of resolutions taken in conference, they are of course submitted for the approval of the contracting States, and then for ratification by the Parliaments of those States. For a decision to come into force, obviously a unanimous vote must be obtained, because the text must be signed in a Diplomatic Conference, and if a contracting State does not take part in this Conference, the provisions adopted are not valid. A unanimous vote, then, is necessary in this case also.

When once questions of this kind have been brought before a Revisional Conference, the result of the work of the Conference is drawn up in the form of a Final Procès Verbal or Final Act, which is submitted to the various Governments for their approval. These Governments then appoint plenipotentiaries to the Diplomatic Conference, which transforms this Final Act into a definite instrument. Finally, this Act must be ratified by the Parliaments of the various countries.

M. CARACOSTEA (Roumania; speaking in French). — Then any text we adopt—either that of the Sub-Committee or that proposed by our colleague of Uruguay—would be null and void, because, if a unanimous vote of the Members of the Bern Conference is necessary, this will never be obtained. There will always be some State which will

not wish to have relations with the League of Nations. The Bern Convention will always remain independent of the League of Nations, and our work will be useless.

M. CARLIN (Switzerland; speaking in French). — I wish to state that I cannot accept the text of our colleague of Uruguay. The text which we submitted to you is the result of lengthy deliberations, and, as I have already stated, I am happy to be able to say that I accept it; but I cannot accept the suggestion of M. Fernandez y Medina. I should add that he alone in the Sub-Committee raised any opposition, and that on a question of form only.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — No, it is not a question of form; it is a question of the authority of the Convention and of that of the representatives of the nations here present.

M. CARLIN (Switzerland; speaking in French). — I thought I understood that it was only a question of form, as the Italian Delegate thought that he could induce our Uruguayan colleague to accept our text if the amendment which he submitted were added. In my view, this amendment is not of very much use. We say that there are direct relations with the International Offices, while leaving blank the decision as to the manner in which these offices will act. That is something which does not concern us; it is a matter of internal working, and we merely say that it is desirable that these offices should exchange information. But we must close the discussion, and I propose that the Committee should adopt the text submitted by the Sub-Committee, with the exception of one word.

M. LANKAS (Czecho-Slovakia; speaking in French). — Allow me to draw the attention of the Delegate of Uruguay to what was said quite rightly by the Polish Delegate at the meeting yesterday. He pointed out that the sentence in the former Article 6 which speaks simply of direct exchange, and which appears to give an order to the central offices, is incompatible with Article 24 of the Covenant, which states that as regards offices already in existence, the assent of all the parties is necessary. But in my view we are not prejudicing the authority of the contracting States when we express the recommendation that until all these questions are settled, there should be certain relations between the Central Office and the League of Nations, comparatively unimportant relations, consisting of the exchange of reports and information which, moreover, already takes place today. There is, then, merely a formula to find. What we desire is a connecting-link of an entirely harmless kind between the Central Office and the League of Nations.

M. WIELOWIEYSKI (Poland; speaking in French). — I should like to put a question which on the surface appears somewhat naive; does not the fact that we are signing a Convention on Railways here create an obligation on all the signatory Members of the Bern Convention? I should like to know what will be the practical result of the relations which we have in mind, and, above all, the obligations which will result from them. I am afraid that we shall sign two contradictory engagements, and I should like a competent person such as M. Etienne to give us some information on this subject.

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — It is somewhat difficult for me to reply point-blank to this question. I imagine that if this case arises, the Central Office will naturally have to come to an agreement in the first place with the Swiss Federal Council, which is our supervisory authority, and which is in charge of our diplomatic relations with the contracting States. This question is clearly of a diplomatic nature. It will follow its course through the channel of the Foreign Offices of the States parties to the Convention, and their reply

will reach us through this channel also. You speak further of the withdrawal of certain States,—of denunciation. This is regulated by Article 60 of our Convention :

ARTICLE 60

The present Convention shall bind each signatory State for a period of three years, to date from the day on which it shall come into force. Any State which may wish to withdraw on the expiration of this period, shall notify the other States one year beforehand. In default of notification, the engagement shall be considered as renewed for a fresh period of three years.

This last obligation is not absolute, and the period is now simply one year.

In order to allay your misgivings as regards the scope of the new Article 6, I will repeat what I said yesterday, that the Central Office has already had relations of a very friendly nature with the League of Nations. The principle of the Central Office was, of course, to reply to all questions sent to it except as regards the interpretation of the Convention, a domain from which it is excluded. We are therefore fully entitled to enter into direct relations with the Advisory Committee on Communications and Transit, and in order to do so we do not require the consent of anyone. We are an autonomous Office, and we shall be delighted to correspond directly with the Committee.

M. CARACOSTEA (Roumania; speaking in French). — I thank you for your statement.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I had the honour yesterday to propose the adoption of Article 6 with the omission of the words between square brackets. The discussion which has taken place today has convinced me personally that we should omit this article, which has given rise to more discussion than any other. There is yet another reason which militates in favour of the omission of the article even in the form drafted by the Sub-Committee. Article 6 speaks of relations between the Advisory Committee and the International Office. The title itself should not remain. In fact, what was anticipated was a Permanent Committee on Communications and Transit, but this permanent character, as such, was not recognised by the Geneva Assembly. In these circumstances, how could we vote for an article which would perpetuate another view? It would be contrary to the spirit of Geneva. I remember that when the Resolution of December 9th was submitted to the Geneva Assembly, keen opposition was shown by many delegations, which are not all represented here. In my opinion, we have before us a question of principle to which we should give further reflection. I think this article would not be in place in the Draft Convention which we are discussing, and that we cannot contravene the provisions of Article 24 of the Covenant. For all these reasons I propose that Article 6 be omitted.

The CHAIRMAN. — This morning the Sub-Committee which you appointed brought forward an almost unanimous recommendation. If it had not been for the absence of the Delegate of Uruguay, you would have voted on that recommendation. Since then the Delegate of Uruguay has arrived, and has very clearly and explicitly given the reasons for his objection. I think it would be the right course for the Committee to vote upon this text. It adds one more to that increasing list of what I may call *highly desirable* articles.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I would beg the Chairman, in accordance with the rules of procedure, to put to the vote my proposal to omit the article.

The CHAIRMAN. — In that case we should also have to vote on the Uruguayan and Italian amendments. I am afraid that that means an adjournment. None of those amendments has been handed in to the Officers of the Conference; they have simply been suggested across the table during speeches.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). --- According to our rules of procedure, the most extreme proposal must be put to the vote first. My proposal, the object of which is to omit the article altogether, is the most extreme. It must therefore be put to the vote first. If it is rejected, the amendment of the Italian Delegate and that of the Delegate of Uruguay may be put to the vote. I hope the President will excuse me for pressing this point.

The CHAIRMAN. --- I was not referring to the order of the amendments. I merely said that if it were insisted on, we should have to vote on each of the amendments. I think we might adjourn the meeting and leave the voting over until tomorrow.

The meeting adjourned at 1 p.m.

FIFTH MEETING OF THE COMMITTEE ON RAILWAYS

(Wednesday, April 6th, 1921, at 10 a.m.)

REPORT ON PROPOSAL SUBMITTED BY INTERNATIONAL LABOUR OFFICE — DISCUSSION OF ARTICLE 6 (contd.) — DISCUSSION OF PREAMBLE — DISCUSSION OF ARTICLES 7 AND FOLLOWING ARTICLES — APPOINTMENT OF RAPPORTEURS.

The meeting opened with Sir Francis Dent, Vice-President of the Conference, in the Chair.

REPORT ON PROPOSAL SUBMITTED BY INTERNATIONAL LABOUR OFFICE

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The Sub-Committee met this morning, and I have the honour to submit to you on its behalf a draft letter to be sent by the Conference to the Chairman of the future advisory and Technical Committee for Communications and Transit. The letter reads as follows :

SIR,

A *vœu*, the text of which you will find attached, proposing to grant concessions in the matter of fares to blind workers travelling in the exercise of their profession, was brought before the General Conference on Communications and Transit at Barcelona by the International Labour Office.

In view of the nature of its powers and the clearly-defined object for which it was assembled, the Conference did not think that it could discuss this *vœu*; but, recognising the eminently humanitarian character of the suggestion of the International Labour Office, it decided to forward this *vœu* to you with a view to its consideration by the Advisory Committee. It appears, moreover, from statements of several Delegates, that measures of the same kind have been taken in various countries on behalf of soldiers disabled in the war.

I have the honour to be, Sir, etc.

The CHAIRMAN. — If there is no objection I propose to notify that this text has been unanimously adopted.

DISCUSSION OF ARTICLE 6 (contd.)

We will now pass to Article 6, which was discussed at some length yesterday, and to which amendments have been submitted on which the Committee must vote. The first of these amendments, submitted by the Serb-Croat-Slovene Delegation, consists in omitting the article altogether.

M. CARLIN (Switzerland; speaking in French). — I think it is difficult to vote at once on the Serb-Croat-Slovene proposal before knowing what will be the text of Article 6 as proposed by the Sub-Committee which you appointed, and whose decision was unanimous except for one vote. The proper procedure seems to me to be to put this text to a provisional vote only; if it were rejected, the fact of rejection might influence the final vote on the omission of the article. The voting would not of course be final, but would be subject to the vote to omit Article 6. Indeed it is important to us to know whether the text proposed by the Sub-Committee has any likelihood of being accepted. For my part if it is to be rejected, I shall vote for the omission of

the article. But if I were asked to vote at the outset for the omission of the article, I should not know what to do, especially as I am bound, in that I have given my assent to the text proposed by the Sub-Committee.

The CHAIRMAN. — I quite appreciate the difficulty experienced by the Swiss Delegation, but the Committee will remember that M. Avramovitch insisted on the right to have his amendment put first. At the same time, even if it is rejected, he would again have an opportunity of carrying it when we come to put the question that the article be adopted; the whole question could then be rejected by a majority.

M. AVRAMOVITCH (speaking in French). — I proposed yesterday to omit this article for two reasons. The first was of a practical nature. The relations which this article aims at creating already exist in virtue of Article 24. Moreover, the statements made by the Director of the Office are most reassuring in this respect. There is yet another reason for which I asked for the article to be omitted. If we allow it to remain, we compromise the competence of the League of Nations and the competence of this Conference. In other words, I am not sure that we are authorised to take up again a question which has already been settled. I further pointed out, if I remember aright, that certain States at the Geneva Assembly raised a somewhat serious question; they did not wish to allow a technical organisation such as the Advisory and Technical Committee to become a kind of super-Ministry of Public Works. It was for this reason that they did not give it the name of *Permanent Committee*, but only that of *Advisory and Technical Committee*. I was very much concerned with the question, and I should be very sorry to see anything perpetuated which the Geneva Assembly did not desire. For these reasons I ask for the article to be omitted altogether; at the same time the Advisory and Technical Committee, the organ of the League of Nations, would retain full initiative to take all useful measures whenever it might think them necessary.

It is most desirable that there should be relations between the international railway offices on the one hand and the League of Nations and the Advisory and Technical Committee on the other. It must not be thought that I am opposed to such relations,—on the contrary; but I would not like, by means of conflicting articles, to create a situation which would be difficult from the legal point of view. For this reason I would beg the Secretary-General of the Conference to give us some information on this point, and I reserve the right to speak again afterwards. Are my anxieties well-founded or not? If the Secretary-General tells me that they are groundless, I am quite likely to withdraw my proposal. I am not animated with a spirit of contrariness, but with the desire to elucidate a point which appears to me obscure. I shall then perhaps propose an addition to the Final Protocol rather than to the Convention.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — Mr. Chairman, I think that M. Avramovitch's explanation of his proposal is somewhat complex and, if I understand aright, one of the reasons for which he proposes the omission of the article is that Article 24 of the Covenant should not be prejudged. I think that point is indeed a very important one, and whatever we may do here, whatever text may be adopted, it is obvious that nothing which may be inserted can prevail against Article 24 of the Covenant and the interpretation of it which may be given in future by all the parties and by the League of Nations. This must be set apart. It is useless, in a technical Conference such as this, to begin a discussion on the interpretation of the Covenant. I think this is not the place for such a discussion. On this point the Conference appears unanimous.

I will venture, however, to point out to M. Avramovitch that the Sub-Committee took all necessary precautions on this subject; in fact its text begins with the words *subject to the provisions of Article 24 of the Covenant...* On this point I venture to suggest what is, I think, a purely drafting amendment. I propose to put *without prejudice to...* instead of *subject to...* I think that this alteration is calculated to satisfy M. Avramovitch. Indeed I think a misunderstanding has arisen; the words *subject to* might lead to the belief that Article 24 of the Covenant stipulates the contrary. What we wish to say is simply that we are leaving untouched the provisions of this article. The rest of the text forms a practical solution which does not raise any other question.

I really think that M. Avramovitch has gone somewhat beyond his own idea in saying that the text of the Sub-Committee might have the effect of instituting a super-Ministry of Public works, or at least might give a handle to the criticisms of those who wish to avoid the institution of a super-Ministry of Public Works. No-one ever intended, by creating the Advisory and Technical Committee, to create a super-Ministry of Public Works. But in any case, if ever—and very mistakenly—this organisation could appear in that light, it would certainly not be as a result of the fact that it maintains direct relations with other international organisations, nor of the fact that it received a report from these organisations, or that it exercised, in any respect whatever, excessively sovereign functions. As M. Avramovitch was good enough to ask my opinion, I think that in these circumstances, and if this interpretation is entered in the records, it would be better to vote for the Sub-Committee's text; it has the advantage that it is the result of an almost unanimous agreement, it raises no question of a legal nature, it makes all reservations as regards the future, and in my opinion it entirely corresponds to the ideas expressed by M. Avramovitch himself.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like first of all to point out that it was not I who made the remark in connection with the institution of this Committee. I said that at the Geneva Assembly certain States were afraid that a kind of super-Ministry of Public Works might be created, and for this reason they asked for the words *Permanent Committee* to be omitted and for the words *Advisory and Technical Committee* to be substituted for them. I thought that if we adopted Article 6 we should again be raising this question, and we should be taking a decision which was rejected by certain States at the time of the Geneva Assembly. As regards the statements made by the Secretary-General, I am very pleased with the alteration which he has suggested, and I ask whether the title of Article 6 will remain in its present form, that is to say *Relations between the Permanent Committee and the International Bureaux*, or whether the title will be changed. I think it would better for it not to remain.

There is another reason, which I will not raise here. We have other Conventions to consider,—the Convention on Navigable Waterways and the Convention on Transit; and nowhere have we said that these relations between the Advisory and Technical Committee and the Offices should exist. I think, then, that we must not make an exception for the Convention which we are now discussing. If the Committee agrees on this point, I will withdraw my proposal to omit the article; but I must state that I have done my duty and have acted according to my conscience. I think that in any case the words *relations between...* should be deleted.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — In order fully to satisfy M. Avramovitch and the very just remark which he has made, it would be well, in accordance with what was decided for the other Conventions, not to mention the name of the Advisory and Technical Committee in the text of the Convention, and to substitute for it *The League of Nations*. In practice it will amount to exactly the same.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — This alteration entirely satisfies me. My proposal had no other object but to arrive at the result which the Secretary-General has indicated. In these circumstances I withdraw it.

M. CARLIN (Switzerland; speaking in French). — For the sake of information I should like to know whether the new text proposed by M. Avramovitch applies only to the title, or to the text itself of Article 6 as well. In any case I wish to say that I accept it.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — It applies both to the title and to the text.

M. CARLIN (Switzerland; speaking in French). — We should say then... *that these Bureaux should exchange directly with the League of Nations*.

The CHAIRMAN. — We have now to vote on the amendment proposed by the Delegate of Uruguay.

The amendment was rejected.

We now pass to the text itself, which was adopted almost unanimously by the Sub-Committee, but which has been modified, and the new version of which has, I think, the support of the Members of the Sub-Committee.

M. SINIGALIA (Italy; speaking in French). — As a result of the discussion which took place yesterday morning, I had the honour yesterday evening of presenting a new text of Article 6, containing purely formal alterations only, which did not in any way affect the basis of the provision approved by the Sub-Committee. The alterations which I proposed to introduce into the article itself were entirely in accord with the proposal which M. Avramovitch has now made. Their effect would be to omit the reference to the Advisory and Technical Committee and to substitute for it the words *the League of Nations*. As M. Avramovitch's proposal has been adopted, I wish to say that I withdraw my amendment.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The text of Article 6, then, reads as follows :

Relations between the League of Nations and the International Bureaux.

Without prejudice to the provisions of Article 24 of the Covenant, the participating States recognise as highly desirable, in cases in which existing Conventions or future Conventions referred to in Article 5 involve the creation of international bureaux, that these bureaux should exchange directly with the League of Nations any useful information relating to the exercise of their functions and submit to it an annual report.

The CHAIRMAN. — I put to the vote the text of Article 6 as proposed by the Sub-Committee and as just read.

Article 6 was unanimously adopted.

DISCUSSION OF PREAMBLE

With reference to the Preamble, which was discussed at length yesterday and on which we proposed to vote to-day, I would claim the indulgence of the Committee while I put to it the result of my own consideration of the matter. It seems to me that it would be desirable for two reasons to avoid a vote to-day if possible. First, I am inclined to the opinion, subject to your approval, that it is scarcely within our competence, as a Committee of the Conference, to change entirely the Preamble of a Convention which has been submitted to us by the Plenary Conference. I cannot help thinking that if such an alteration is made, it ought to be made in Plenary Conference. I also think that, whatever we do here, whichever view we take, the point is certain to be raised again in Plenary Conference. The other point to which I wish to call your attention is that if we alter the Preamble in the sense proposed by the French Delegate, it will be of very little use to discuss at all the articles from Article 7 to the end, or most of them. If later, in the Plenary Conference, the original wording were restored, the work consequent on that restoration would not have been performed. There is another reason. Although many of the delegates here are Chief Delegates, yet many of them are not, and this question, being one of policy, seems to me within the province particularly of the Chief Delegates. I therefore suggest that we should not take a vote, but that we should ask the Rapporteur to mention the divergence of opinion in the Report, in order that the matter may be settled in Plenary Conference.

M. LOISEAU (France; speaking in French). — I wish to say that I give my hearty support to your proposal. I do so the more willingly because it is in complete accord with a declaration which M. Sibille, the head of the French Delegation, instructed me

to make. M. Sibille not only approves in every point the view and the conclusions which I have defended before you, but he reserves the right to return to them and speak further upon them in Plenary Conference. M. Sibille also asked me to tell you that he was at the disposal of this Committee if it wished to hear him. I think that in view of the proposal which the Chairman has made this suggestion becomes of less importance.

The CHAIRMAN. — If there is no objection, I consider that the Committee accepts my proposal.

DISCUSSION OF ARTICLE 7 AND FOLLOWING ARTICLES

We now pass to Article 7, which I will read :

Application of the Conventions in time of war.

The stipulations contained both in the present Convention and in the Conventions referred to in Article 4 shall be valid in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

No amendment to this article was put in. I will put it to the vote, it being understood that for this article, as for the following ones, the necessary alterations will be made to bring them into conformity with the corresponding articles in the other Conventions.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I greatly regret to have to occupy your time again on this fundamental question of *recommendations* or *convention*, but I wish to state that the Brazilian Delegation will not consider itself bound by the vote taken on all these articles. The fundamental question still remains in suspense.

The CHAIRMAN. — Obviously these articles will only remain if the Preamble is not altered.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — We must not be liable to be told that we have accepted the Convention because we have already voted for some particular article, as was done yesterday in connection with Article 4. The position must be quite clear.

M. LOISEAU (France; speaking in French). — If I understand the Brazilian Delegate's observation aright, he means that for these articles we should take a conditional vote subject to the Preamble remaining in its present form.

The CHAIRMAN. — This is quite clear. The statements of the Brazilian and French Delegates will be entered in the records; there will thus be no need to fear the consequences referred to by the Brazilian Delegate.

M. WIELOWIEYSKI (Poland; speaking in French). — Does the President think that this question could be raised in Plenary Meeting when the Report of the Committee is discussed, or that it could be dealt with as a separate question at the next Plenary Meeting? It is very awkward to discuss these articles conditionally; we feel that we are beating the air. It is deceptive, particularly for those who advocate the form of recommendations, to pursue a discussion on articles which may afterwards be rejected. Could you not see your way to refer this question to the Plenary Assembly at the very next meeting, that to be held this afternoon? The discussion of the following articles could then with advantage be resumed in Committee.

The CHAIRMAN. — The course I shall follow as regards the Preamble is to report immediately to the President of the Conference who will decide how soon the question is to be brought up in Plenary Conference. If it is not brought up specially it will occur in the Report of the Committee. But I do appeal to the Polish Delegate; all the articles which we have to consider now, from Article 7 to the end, can be passed in a few words. The contentious matter in them has already been discussed in other Conventions, and an agreement reached. It is perfectly true that under certain conditions that work might be wasted; on the other hand, under other conditions it would be very useful to have performed it, and it will take such a short time, I hope, that I think we might proceed.

I now put to the vote Articles 8, 9 and 10, which correspond respectively to Articles 9, 12 and 14 of the Convention on Freedom of Transit.

Articles 8, 9 and 10 were adopted.

The Roumanian Delegation has submitted an amendment to Article 11.

M. CARACOSTEA (Roumania; speaking in French). — I proposed the omission of Paragraphs 2 and 3 of Article 11 because I should like these paragraphs to be brought into accord with the new text of the Transit Convention. I therefore confine myself to asking you to refer them to the Drafting Committee, which will bring these articles into accord with Article 15 of the Transit Convention. I withdraw my amendment, on the understanding that the texts of the articles of both Conventions are brought into accord.

The CHAIRMAN. — As M. Caracostea has withdrawn his amendment, I will put to the vote Articles 11, 12, 13, 14, 15, 16, 17, 18 and 19, which correspond respectively to Articles 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the Draft Convention on Freedom of Transit, and which, as such, have already been discussed.

Articles 11, 12, 13, 14, 15, 16, 17, 18 and 19 were adopted.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — Would it not be possible to insert in the Railways Convention an article similar to Article 7 of the Transit Convention?

M. POLITIS (Greece; speaking in French). — Are you not satisfied with the fact that Article 6 a), proposed by the Italian Delegation, has been accepted?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like to point out that the Portuguese Delegation has already received satisfaction by the acceptance of Article 6 a).

The CHAIRMAN. — I think indeed that Article 6 a), which was adopted on a proposal of the Italian Delegation, meets your requirements.

APPOINTMENT OF RAPPORTEURS

We have not yet appointed Rapporteurs. I propose M. Satake, Delegate of Japan, and M. Politis, Delegate of Greece.

This was decided.

The CHAIRMAN. — Our labours are now completed. I thank you for your collaboration and your patience.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — Now that our work is completed, I should like to thank the Chairman for the goodwill with which he has directed our discussions and the impartiality which he has shown to all of us. I myself

am most indebted to him in this respect. I thought that before we separated I ought to interpret the sentiments of all my colleagues in these words.

M. LOISEAU (France; speaking in French). — I wish to associate myself with the Brazilian Delegate in his appreciation of the manner in which the Chairman has presided over our discussions, and to assure him that we all share the sentiments of gratitude expressed by M. Barboza Carneiro for the manner in which he has carried out his task.

The CHAIRMAN. — I thank you very much. I have felt it a very great honour to be allowed to preside over this Committee, and I am only too conscious that my deficiencies were such that, if it had not been for your patience and consideration, I should not have been equal to this task which has ended so happily.

The meeting rose at 11.20 a.m.

PART III

REPORT

OF THE

COMMITTEE ON RAILWAYS

AND

DISCUSSION IN CONFERENCE

TWENTY-THIRD MEETING OF THE CONFERENCE

(Tuesday, April 13th, 1921, at 4.30 p.m.).

REPORT OF COMMITTEE ON RAILWAYS — DISCUSSION ON TRANSFORMATION OF CONVENTION INTO RECOMMENDATIONS

The meeting opened with M. Hanotaux, President, in the Chair.

The PRESIDENT (speaking in French). — M. Monnet, Deputy Secretary-General of the League of Nations, is present at this meeting and is assisting the Officers of the Conference in his official capacity.

REPORT OF COMMITTEE ON RAILWAYS

We will begin our discussion of the Report submitted by MM. Satake and Politis on the work of the Committee on Railways. Before asking M. Satake to speak, it is my duty to thank the Rapporteurs on your behalf for the admirable work which they have accomplished, and also for the invaluable assistance which they will give us during the course of this debate. I should also like to thank Sir Francis Dent, Vice-President of the Conference, who was Chairman of the Committee, and who is present at this meeting and will, I trust, give us the benefit of his special knowledge.

M. SATAKE (Japan; Rapporteur; speaking in French). — The Committee to which you referred the Draft Convention on the International Regime of Railways, which was submitted to you, entrusted us with the task of reporting to you the results of its labours.

The Committee's task was an easy one; in fact, five short meetings sufficed for it to complete the mission with which you entrusted it. Its work was rendered easier owing to the fact that, as the Convention on Railways was a derivative and complement, so to speak, of the Convention on Freedom of Transit, most of the principles and provisions contained in the former have been introduced into the latter, and had already been debated and adopted at the time when it was discussed. We must add, however, that the facility and rapidity with which the Committee was able to fulfil its task were also due both to the goodwill and conciliatory spirit manifested by all the delegates on this Committee, and also—and above all—to the skill, impartiality and goodwill with which the Chairman, Sir Francis Dent, directed the discussion. We have particular pleasure in reporting to the Conference, first of all, that the Committee, when dissolving, expressed to its distinguished Chairman its thanks and gratitude for the manner in which he carried out his difficult task.

On a motion of the Chairman, the Committee postponed the discussion of the Preamble until after the discussion of the articles which are essential parts of and peculiar to the Draft Convention, and passed on to the consideration of the first and following articles.

ARTICLE 1. — With regard to Article 1, the following amendments were brought before the Committee :—

a) Roumanian Amendment.

In this amendment the Roumanian Delegation proposed to omit the words *mails and postal parcels* wherever they occur, in order to bring the wording of this article

into accord with that of the Convention on Transit. In the discussion of this amendment, the following delegations spoke in favour : Belgium, France, Greece, the Serb-Croat-Slovene State, Austria, Italy and Persia, and against : Czecho-Slovakia.

The question having been raised whether the Madrid Postal Convention applies to the transport of mails and postal parcels by rail, the Delegate of Persia, who had been present at Madrid and had signed the Postal Convention, asserted that the latter applied both to transit and to railway transport.

As a result of this discussion, the Roumanian amendment was put to the vote, and was adopted by 24 votes to 3.

b) Italian Amendment.

The Italian Delegation proposed to substitute for the words : *agree to recognise as highly desirable* the words, *undertake to adopt*, giving as a reason that the recommendation as expressed in the article adds nothing to what already exists in all international railway relations. The Italian Delegation added that a failure to undertake this obligation would constitute a retrogression from the existing state of affairs. The chief opposition to this amendment came from the Spanish Delegation. The Delegation of Great Britain declared itself in agreement with the Spanish Delegation, as it considered that the words *undertake to adopt* were somewhat too rigid, in view of the fact that the Convention does not apply only to European railways, but also to the railways of the whole world. The British Delegation therefore proposed a milder wording, as follows :— *undertake to adopt or encourage the adoption of...* The Italian Delegation accepted in principle the proposal of the British Delegation. The Czecho-Slovak and Greek Delegations supported the Italian amendment, but the French Delegation and the Serb-Croat-Slovene Delegation proposed that the text of the *Green Book* should be retained. The Greek and Czecho-Slovak Delegations repeated their view that they could not conceive of a Convention in which no obligations were undertaken. The Brazilian, Polish and Belgian Delegations also opposed the Italian amendment. Finally, this amendment was put to the vote and was lost by 23 votes to 4.

c) A Czecho-Slovak Amendment covering the same ground as a German Amendment.

By this amendment it was proposed to add after the words *by a single waybill* the words *subject to the same obligation (uniform consignment note)*. It is clear from the debate which took place on this subject that the addition proposed was intended to explain the phrase in the article *more particularly as regards the through transport of goods, whenever possible by a single waybill*, and also to bring international goods traffic under a uniform code of legislation which should—as regards international goods traffic on the continent of Europe—be the one established by the Bern Convention, and in other continents, any other special Convention which may exist or may be concluded between any other group of States. The amendment was put to the vote and was adopted by 20 votes to 3.

d) Italian Amendment.

This amendment proposed that the words *la forme d'établissement de tarifs communs* (*the form of establishment of common tariffs*) should be substituted for *le mode d'établissement de tarifs* (*establishment of... tariffs*). The Czecho-Slovak Delegation, on the other hand, stated that they preferred not to add the word *common* to the *Green Book* text, since in its opinion this text meant that even local tariffs should in theory be established in such a way as to facilitate international traffic. The Belgian Delegation proposed to substitute in place of *common tariffs* the words *international tariffs*; the object of this was to avoid any uncertainty. The Italian Delegation supported this proposal, and the words *the form of establishment of international tariffs* was adopted.

The same Italian amendment involved the deletion of the words *their rates*; this delegation considered that tariff rates should not be made the subject of negotiations in connection with the establishment of tariffs, that the rates are generally the same as those of the local tariff scales for each State, and that the question is specially reserved for the authorities of each individual country. The deletion of the words *their rates* was adopted without opposition. The complete text of Article 1, as finally amended, was adopted.

It will be observed that the text of Article 1 has been slightly altered by the legal experts and the Drafting Committee, with a view to rendering it clearer. Further, both in Article 1 and in Article 2 the words *without prejudice to the provisions of the Convention on Freedom of Transit* have been deleted and transferred to a new article which is inserted in the Convention and reads as follows :—*The present regulations in no way affect the rights and obligations which may result for any of the Contracting States from the Convention on Freedom of Transit.*

It will also be observed that throughout the Convention the words *High Contracting Parties* have been replaced by the words *Contracting States*, in conformity with the text of the Transit Convention, without implying any liability as regards the final text. The same applies to the use of the words *Convention* and *Regulations*.

ARTICLE 2. — On the subject of Article 2 the following amendments were brought before the Committee.

a) Italian Amendment. This amendment was similar to that already referred to under b) in connection with Article 1. As a result of the decision taken with regard to Article 1 the amendment was withdrawn.

b) Czecho-Slovak Amendment. This amendment is in the same sense as that under c) by the same delegation with regard to Article 1. It was adopted, and the words *subject as far as possible to the same obligation* were added at the end.

M. Étienne, Director of the Central Office at Bern, having pointed out the omission in Article 2 of reference to *through luggage registration tickets*, the Committee recognised the justice of his observation and decided to add to the end of the article the words *as well as through luggage registration tickets, subject as far as possible to the same obligation.*

Article 2 was adopted as amended.

ARTICLE 3. — On Article 3 the Spanish Delegation proposed an amendment with the object of excluding from the provisions of the article the obligation to change the gauges of two adjacent countries when their characteristics were essentially different. This amendment was strongly supported by the delegations of all those countries where the gauges of the railways differed from the normal gauge. In the course of the discussion, other delegations intervened to observe that the interchange of rolling-stock might be rendered difficult or impossible from the fact of differences in the loading-gauge. The Committee took into consideration both the Spanish amendment and the suggestions of the other delegations, and after having heard the Sub-Committee to which it sent this amendment for consideration, it was decided to add to the end of Article 3 the following paragraph :—*it is clearly understood that the above-mentioned measures do not include those which would involve alterations in the essential characteristics of a railway system or rolling-stock.*

Article 3 was adopted in its amended form.

The Italian Delegation proposed to add after Article 2 a New Article, to read as follows : *The High Contracting Parties agree to undertake in connection with the construction or electrification of railways in the neighbourhood of a frontier, which are of interest to international traffic, to adopt as far as possible all measures which would allow of an improved operation of these lines, including the possible concession of electrical power by one country to another.*

In support of his proposal the Delegate of Italy pointed out how desirable it would be to replace steamtraction everywhere by electric traction, with a view to the improvement of international communications, but as electrical power might abound in one country and be insufficient in a neighbouring country, it would be desirable, after the countries which possess this power have satisfied their own needs, that they should undertake to cede their surplus electrical power to those adjoining countries which lack it. The Delegations of Paraguay and Brazil supported the Italian proposal on condition that it would be brought forward as a recommendation and not as an engagement. The Italian Delegation accepted the view of these two delegations.

Against this the Delegations of Belgium, the Netherlands, Switzerland, Austria and France raised the point that this was an entirely special question, that it was not in its

place in the Convention, and that it should be reserved for special agreements in each particular case. The Belgian and French Delegations also adduced strategic reasons.

Eventually the Swiss Delegation proposed that it would be preferable, in order to avoid any misunderstanding, to reject altogether the additional article proposed by the Italian Delegation. The Chairman put to the vote the text of this article as amended by the Brazilian Delegation and accepted by the Italian Delegation. The article was rejected by 16 votes to 6.

ARTICLE 4. — The following amendments to Article 4 were before the Committee:—

a) Italian Amendment.

The object of this amendment was to substitute for the words *local tariffs on a different basis*, the words *different tariffs on a different basis for internal, import, export or transit traffic*.

The Italian Delegation explained that this amendment was only a textual change. As was evinced in the discussions that took place and also in the *Green Book* commentary, each country would have the right to establish for its home traffic tariffs differing not only from import and export tariffs, but also from transit tariffs. In fact, each tariff system includes several classes of tariffs, local tariffs, import, export or transit traffic.

The Belgian Delegation, whilst supporting the Italian proposal, suggested the addition after the words *must not consider as either preventing...* of the words *the existence and establishment*.

The Czecho-Slovak Delegation also supported the Italian amendment, proposing, however, that a special article should be inserted on the subject of tariffs and that the passage treating of special conventions should be transferred to another article.

The French Delegation likewise gave its support, but suggested that the text should be worded as follows: *different tariffs for internal, import, export or transit traffic*.

The Delegation of the Serb-Croat-Slovene State declared itself in agreement with the Italian proposal as amended by the French Delegation. After discussion, the Italian proposal, as amended by the Belgian and French Delegations, was accepted.

b) British and Czecho-Slovak Amendments.

These amendments refer both to Articles 4 and 5; they approximate on certain points, and are essentially different in others. The two delegations agreed in desiring to place in a new article the question of special conventions referred to in preceding articles. The British Delegation, however, was of opinion that the principle of equality and the question of tariffs should be dealt with solely in the General Convention, and that the special Conventions should only deal with the principles laid down in Articles 1, 2 and 3. The Czecho-Slovak Delegation, on the other hand, strongly supported by the Serb-Croat-Slovene Delegation, desired that the special Conventions should ensure the application of the principles laid down both in Articles 1, 2 and 3 and also in Article 4.

Both these amendments had the effect of excluding from Article 4 the question of combined traffic by rail and water, including maritime traffic, and rightly so, for it is clearly stated at the end of the first paragraph of Article 4 that the provisions of that article in no way *concern the question of combined rail and sea tariffs*. The British amendment further proposed to delete the phrase *over the same throughout route, in the same direction, and in the same conditions*, while the Czecho-Slovak amendment kept these words. This last question was discussed, and the Committee decided to retain these words. In the course of the discussion, M. Étienne, the Director of the Central Office at Bern, was asked to give his opinion on the wording of the second paragraph of Article 4, and suggested that after the words *having as its object the granting...* the phrase *to one or more passengers* should be added, to show clearly that the article refers to passenger as well as goods traffic.

The Italian Delegation asked that in order to bring the text of Article 4 of the Railways Convention into accord with that of Article 4 of the Convention on Freedom of Transit, the following words should be inserted:—*Having regard to the traffic conditions and to commercial competition*.

The Brazilian Delegation brought forward an amendment concerning the application to the whole journey both by land and by water of the principle of equality of

treatment with regard to tariffs. In the course of the discussion the Brazilian Delegation withdrew its amendment in view of the fact that another Committee was dealing with the same question from a more general point of view.

After long discussion, the Czecho-Slovak amendment was adopted in principle, and was referred to a Sub-Committee, together with M. Étienne's suggestion and the amendment of the Italian Delegation mentioned above, in order that the whole text of Article 4 might be co-ordinated. The Sub-Committee produced the text of Article 4 as it now stands, which was unanimously adopted by the Committee.

ARTICLE 5. — On Article 5 the Committee had before it two amendments brought forward by the British and Czecho-Slovak Delegations respectively, and another amendment proposed in the course of the meeting by the Belgian, Brazilian and Chilian Delegations. This last amendment, the effect of which was to limit the scope of Article 4 to special Conventions to be concluded in the future, thus eliminating both the compulsory character of the article and the element involving its immediate application, was opposed by several delegations, particularly by the British, Czecho-Slovak, Italian, Swiss and Greek, and was withdrawn before being put to the vote. The British and Czecho-Slovak Delegations, as their amendments show, both agreed that the application of the principles laid down in Articles 1, 2 and 3 should be ensured by special Conventions. But the British amendment provided that these Conventions should ensure the application of the principles laid down in the said article *as far as possible*, and that of the Czecho-Slovak Delegation added that these conventions should be concluded in respect of groups of contiguous territories. These two amendments were merged without difficulty by mutual concessions on the part of both delegations, and the final text was put to the vote and carried by 20 votes to 5.

The legal experts and the Drafting Committee changed the order of Articles 3 and 4, as the latter now only refers to Articles 1, 2 and 3.

ARTICLE 6. — On Article 6 (1) the Committee had before it an amendment of the

(1) The subject of Article 6 led to the following discussion at the meeting of the Railways Committee at which the Report of M. Satake and M. Politis was read.

M. CARLIN (Switzerland; speaking in French). — Whilst paying a tribute to the work of the Rapporteurs, I should like to point out with regard to Article 6 that one point has not been mentioned in the records of the discussion of the amendment proposed by the Swiss Delegation—a point which I brought up several times and which I should like to see noted in this report, namely, that this amendment was proposed by the Swiss Delegation, not on behalf of the Swiss Government as such, but on behalf of the Swiss Government in its capacity as the authority which organises and supervises the international offices established at Bern. If the Rapporteur has no objection, therefore, I would propose that we should replace the first paragraph, dealing with Article 6, by the following text, which would also have the advantage of being much shorter, as the second part of this paragraph only repeats more or less the idea contained in the first part :—

“On Article 6 the Committee had before it an amendment of the Swiss Delegation proposed in the name of the Swiss Government in its capacity as the authority for organising and supervising the international offices established at Bern, which proposed that International Offices should fulfil the conditions laid down in that Article as soon as all the States participating in the Conventions, by which the said Offices are instituted, have consented thereto.”

M. POLITIS (Greece, Rapporteur; speaking in French). — I would ask permission to state in reply to the Delegate of Switzerland that he is here raising a question of principle. I thought it was understood that only delegates of countries sitting at the Conference have the right to propose amendments, whereas all the representatives of organisations and commissions may only be asked to give their opinion. It is for the Conference to decide whether it should allow them to take part in the debate. It was for that reason that I did not mention a part taken in the debate by a person acting in a capacity other than that of delegate.

M. CARLIN (Switzerland; speaking in French). — There is a misunderstanding. I certainly took part in the debate in my capacity as Delegate for Switzerland, and only in that capacity—not in the name of the Federal Council as such, but in the name of the Federal Council as the organising and supervising authority for the International Offices. I should like to emphasise this point. The objection which has been raised therefore seems to me to be unfounded.

M. POLITIS (Greece, Rapporteur; speaking in French). — The question seems to be outside the scope of the Rapporteur's duties, and possibly even outside the scope of the work of this Committee. I therefore propose that it be referred to the Jurists' Committee.

The CHAIRMAN. — May I suggest that we should leave M. Politis' text as it is, and that M. Carlin should take the opportunity of making his position clear in plenary meeting.

M. POLITIS (Greece, Rapporteur; speaking in French). — I should like to point out that the words *in so far as all the States adhering to the Convention...*, which M. Carlin has altered in the text which he proposes, were in his amendment itself, and that was why I kept them in my Report.

M. CARLIN (Switzerland; speaking in French). — I put in *as soon as* because it seemed to me to be better French.

M. POLITIS (Greece, Rapporteur; speaking in French). — The terms of the amendments should be reproduced exactly in the reports. As for the Chairman's suggestion that the text of my Report

Swiss Delegation proposing that the International Offices should fulfil the conditions laid down in that article, in so far as all the States parties to the Convention by which they were instituted should consent thereto. By this provision the Swiss Delegation proposed that the International Offices whose working is provided for by existing or future Conventions, as referred to in Article 4 (now Article 5), could fulfil the conditions laid down in Article 6 only if the States parties to a special Convention by which they were instituted unanimously consented thereto.

A discussion took place on this amendment, and the Swiss Delegation declared itself prepared to withdraw its amendment should the words *existing or...* which appear between square brackets in the text of Article 6 in the *Green Book* be deleted.

The Czecho-Slovak Delegation was the first to oppose the adoption of the amendment proposed by the Swiss Delegation, declaring that it did not understand the reasons for which the Swiss Delegation objected to the International Office at Bern exchanging with the Advisory Committee useful information relating to the exercise of its functions, and submitting an annual report to the League of Nations, and that it did not see how such a provision could affect the competence of the Central Office. The Czecho-Slovak Delegation added that, on the contrary, it considered it quite natural that a Central Office dealing with a matter so important as the Bern Convention should be in touch with the League of Nations. A long discussion took place, in which several delegations took part, and, as an agreement could not be reached, Article 6 was referred to a Sub-Committee. The latter drew up an amended text, to which, however, all its members did not agree. By this text the contents of Article 6 was expressed in the form of a recommendation, which left Article 24 of the Covenant untouched. This form, which was eventually accepted by the Swiss Delegation, was declared unacceptable by the Delegation of Uruguay, which considered that it could only accept a text containing compulsory provisions.

The Serb-Croat-Slovene Delegation proposed the omission of the article, but as following a suggestion of the Secretary-General of the Conference, who was present at the meeting, and who proposed to substitute for the words *subject to* the words *without prejudice*, this delegation, considering that the alteration satisfied it, withdrew its proposal.

The text of Article 6, as presented by the Sub-Committee, was put to the vote, as modified in this discussion by the Secretary-General, and was unanimously adopted by the Committee.

should be kept, and M. Carlin left to make his position clear in plenary meeting, it is for the Committee to decide.

M. CARLIN (Switzerland; speaking in French). — Perhaps it would be better to avoid a discussion in plenary meeting and settle the question here.

M. HANREZ (Belgium; speaking in French). — Perhaps M. Carlin would be satisfied if his declaration were inserted in the record of the meeting.

M. CARLIN (Switzerland; speaking in French). — I am quite prepared to abandon the addition which I proposed with a view to showing that I spoke on behalf of the Federal Council as organising and supervising authority for the International Offices; but I should like to keep the latter part of my wording, which I think is shorter.

M. POLITIS (Greece, Rapporteur; speaking in French). — The Swiss Delegate proposes to omit the second part of the paragraph. I would point out that it was the Swiss Delegation itself which, in its amendment, laid down that the International Offices, whose working was provided for by existing or future conventions, could fulfil the conditions laid down in Article 6, only, if the States parties to a special convention by which they were instituted, unanimously consented thereto. The qualification *unanimously* is of importance.

M. LOISEAU (France; speaking in French). — The explanations given by the Swiss Delegate seem to me to settle the matter. M. Carlin has explained to us that in this particular case he represented the Swiss Government in its capacity as administering and supervising authority for the International Offices, and not as a Government. It is, however, the Swiss Government which addresses us, and, being represented here, it is perfectly qualified to do so.

The CHAIRMAN. — Unless there is anything absolutely inaccurate in the Report we cannot ask the Rapporteurs to alter it. All the explanations that M. Carlin has given will appear in the records.

M. CARLIN (Switzerland; speaking in French). — If the Rapporteurs insist on keeping their inferior text, I have no reason to improve it. Since my proposal has given rise to remarks regarding the principle, and since it has even been said that it might be discussed in plenary meeting, I prefer to withdraw it. The text will remain as it is.

ARTICLE 6 *a*). — The Italian Delegation proposed to add a supplementary article after Article 6. This article is identical with an article of the Transit Convention, as adopted by the Plenary Committee on this Convention, and deals with special exceptions to the Convention. The Committee accepted in principle the addition of this New Article, and decided to refer the matter to the Drafting Committee.

ARTICLES 7 TO 20. — Articles 7 to 20 inclusive were conditionally adopted by the Committee until a decision should be taken with regard to the Preamble, and were referred to the Drafting Committee, in order that the wording should be brought into accord with the corresponding articles in the Draft Convention on Freedom of Transit.

PREAMBLE. — After adopting the articles of the Draft Convention, the Committee, on a proposal of the Chairman, entered upon the discussion of the Preamble, which, as has been said, was postponed at the outset. The question whether the provisions as adopted should take the form of a convention or of a series of recommendations having been raised, the Committee decided, on the Chairman's proposal, to refer the discussion of this important question to a plenary meeting of the Conference.

The Draft Convention submitted for your approval is an achievement modest in appearance. It is true that it does not immediately and completely solve the important and complex problem of international railway transport, but it does make a stage on the road towards the general organisation of international communications. The Convention will have to be completed by special Conventions which will be concluded between neighbouring States or railway administrations. These special Conventions, which will be based on the principles of freedom and equality laid down in the general Convention, will at first deal with local conditions, but will tend gradually to merge together and will constitute, at what we hope will be no distant date, the international code for railway traffic.

By subscribing to the Convention submitted to you, you will not only be fulfilling one of the behests of the Covenant of the League of Nations, but you will at the same time be accomplishing a most valuable piece of work for the economic existence of the world,—a work for which public opinion, which is anxiously awaiting the results of this Conference, will be lastingly grateful to you.

Lastly, we desire to express our most hearty thanks to the Committee and to its distinguished Chairman, Sir Francis Dent, for the honour that it has conferred upon us in entrusting us with the preparation of this Report,—an honour which reflects on our respective countries, Japan, which has long followed the path of progress, and which ardently desires to contribute to the development of world-communications, and Greece, which is happy to join in any useful work and thus reap the fruits of that civilisation which she formerly spread so generously throughout the whole world.

The PRESIDENT. — I thank the Rapporteurs for the manner in which they have helped us to examine and comprehend the Draft Convention.

DISCUSSION ON TRANSFORMATION OF CONVENTION INTO RECOMMENDATIONS

The question now arises as to what will be the final form of this Convention. The Conference will doubtless desire to hear the explanation which the French Delegation wishes to give on this subject.

M. SIBILLE (France; speaking in French). — Article 397 of the Treaty of Versailles reads as follows :—

Without prejudice to the special obligations insisted upon here by the present Treaty for the benefit of the Allied and Associated Powers, Germany undertakes to adhere to any Conventions regarding the International Regime of Transit, Waterways, Ports or Railways which may be concluded by the Allied and Associated Powers with the approval of the League of Nations, within 5 years of the coming into force of the present Treaty.

After the signing of this Treaty, a Commission, which included representatives of the different countries, was appointed at Paris to study all the questions relating to Transit and International Transport. In February 1920, the Council of the League of Nations asked this Commission to prepare General International Conventions on Transit, Waterways and Ports, and if possible on Railways (1).

Why did the Council of the League of Nations insert the words *if possible* before the word *railways* in its resolution? Because, in the opinion of the Council of the League of Nations, a General Convention on Railways, dealing with difficult and complex questions, and being necessarily composed of a very large number of articles, should be preceded by an enquiry, by considerable research, and by thorough examination. The Paris Committee of Enquiry set to work. It put before you a Draft Convention on Transit, and a Draft Convention on Waterways. It believed that it would be able to add to these a Draft Convention on the International Regime of Railways. But in the short period at its disposal it was not able—and I do not mean this as a reproach—to prepare a *General* Convention on Railways, but it did produce certain provisions, several of which are only recommendations. I have carefully read these provisions. In company with the recommendations I see only two principles laid down in the Draft Convention,—principles which have for many years been applied throughout Europe. Thus the contractual provisions of the Draft submitted to you may be summed up as the application to the whole world of the following two principles :

(1) As regards passenger traffic, no distinction shall be made based upon the nationality of passengers, and as regards the transport of goods no distinction shall be made based upon the commercial origin, point of departure or destination of goods;

(2) There shall be no private agreements granting advantages to certain consignors.

I repeat that these two principles are not new; they have for long been applied throughout Europe.

The Committee which you appointed at once recognised, therefore, that the Draft Convention submitted to you was not the General Draft Convention referred to in Article 379; I will extract the following words from the Report which has been read (2).

The Convention will have to be completed by the Special Conventions which will be singly concluded between neighbouring States or railway administrations. Those Special Conventions which will be based on principles of freedom and equality laid down in the General Convention, will deal with local conditions, but will gradually merge together, and will constitute, at what we hope will be no distant date, the international code for railway traffic.

On this point I am in complete agreement with the Committee. It recognises that we have not been given the international code for railways and transport which we desire. It adds that this code must be prepared, and it states that, in order to do so, regional conventions must first come into existence between administrative bodies of neighbouring railways; then, when all these regional conventions have been concluded, it will be seen what are the principles contained in these various regional conventions. It will then be possible to prepare the international transport code, without giving rise to any complaints or protests, and without causing any difficulty. I agree with the Committee.

(1) The text of the Resolution of February 13th reads as follows :—

“The Council invites the Commission of Enquiry on Freedom of Communications and Transit, meeting in Paris on the initiative of the French Government, and having as Secretary an official from the Secretariat of the League of Nations :

“(a) To submit to the Council proposals for the formation of a permanent organisation, as part of the organisation of the League of Nations, concerning Communications and Transit;

“(b) To prepare, for submission to this organisation, drafts of general International Conventions with regard to Transit, Waterways, Ports and, if possible, Railways;

“(c) Provisionally, and until the organisation has been formed, to advise on questions which the Council may think fit to submit to it and which fall within the jurisdiction of the League of Nations, under the terms of Article 23 of the Covenant of the League, and of the Articles in the various Peace Treaties relating to Ports, Waterways and Railways.”

(2) See preceding page.

It introduced several alterations in the Draft prepared at Paris, but it reserved the question whether all the ideas which it approved would be expressed in a Convention or in a series of recommendations. This is what the report states (1) :—

The question whether the provisions as adopted should take the form of a Convention or of a series of recommendations having been raised, the Committee decided, on the Chairman's proposal, to refer the discussion of this important question to a meeting of the Plenary Conference.

I will endeavour to show you that we should be wise to confine ourselves to making a series of recommendations. The General Convention on the International Regime of Railways provided for in Article 379 should lay down the general conditions for the construction and operation of railways. As you will see, this is a vast field which is opened to the activity of those, mark you, who will make the Conventions. But in Europe part of the task has already been accomplished. By a Convention signed at Bern in 1890, the conditions for international transport are fixed and the rights and duties of those who use the railways are defined. This Bern Convention does not merely indicate under what conditions traffic may be carried on from a station situated in one State to a station situated in another with a single way-bill; it does not contain four or five articles only, as does the Draft now before us. The Bern Convention contains 61 articles, in addition to attached regulations. Why was it not confined to the fixing of the conditions in which way-bills should be issued? Because it was desired that all international traffic should be carried on under the same conditions. What was the complaint made at that time on behalf of international commerce? It was complained that when traffic was carried on between two countries the rules and regulations for this traffic, and the laws to which it was subject, varied according to the direction in which it was carried out. According to international law, indeed, contracts are regulated by the law of the place in which they were made. Take, for example, traffic from Belgium to France. Before the Convention of 1890, this traffic was carried on entirely under Belgian law. Take, on the other hand, traffic from France to Belgium; this was carried on wholly under the conditions laid down by French law. In this way it came about that varying regulations were applied for international traffic. The chief effect of the Bern Convention was to lay down the conditions in which all international traffic should be carried on. If you examine this Bern Convention you will see that it contains various provisions, the importance of which cannot be mistaken. It defines what are the responsibilities incurred by the consignors for incorrect declarations or faulty packing, and by the railway administrations in case of loss, damage, loss of weight, delay in delivery, theft, or serious fraud. It defines the conditions in which customs, octroi and police formalities are to be carried out, and lays down the regulations applicable to the calculation and payment of cost of transport. It determines the conditions under which all actions brought against the railways shall lapse, or the time-limit within which they shall be made. It thus forms a veritable code for international traffic, regulating the relations between carriers and commerce.

The Bern Convention contains one of the two provisions which we are now asked to adopt afresh, and which it is intended to apply throughout the world,—the provision regarding the prohibition of private agreements, which does not allow advantages to be reserved for individual consignors.

The Bern Convention was to have been revised before the war; the outbreak of the war rendered this impossible. But France took the initiative of denouncing the Bern Convention, and her example was followed by Belgium, Roumania and Italy. The Bern Convention was denounced by four Powers. Why? Because these Powers—France in particular—desire the Bern Convention to be completely revised. The Convention contains principles which, according to France, should be modified. Amongst these is the provision relating to private treaties, which you wish to extend to the whole world. But, you will say, does France now wish to tolerate private treaties? And you might add: In all charters granting concessions you forbade your big railway companies to conclude these special agreements; surely you will

(1) See p. 115.

not now ask for them to be authorised? No, we do not ask for that, but we wish this prohibition to be observed everywhere. We desire this provision, which you wish to extend to the whole world, to be at least interpreted in the same manner by all railway administrative bodies, by all the contracting States.

I will explain. In France, as we have said, we consider that commerce should not be protected by railway tariffs, and we claim that industry and commerce should be protected only by customs tariffs. I am in a position to remind you of these principles. When I had the honour to prepare a Report on the Treaty of Versailles, I said : Here is the policy which we follow in France; we will not have railway tariffs protecting industries. In other countries this is not so, and if you have read the *Green Book* carefully you must have noticed that certain countries claim that they can protect national industries by means of railway tariffs. What actually happens? In every country the charges levied are announced by means of tariffs which are posted up and published, and regularly approved by the State; but in certain countries again, in order to protect national industries, a bonus or rebate is granted, at the end of the year, to important consignors. We do not wish this to take place, and we desire that the article which you wish to apply to the whole world should be applied in the same manner everywhere.

M. NEUJEAN (Belgium; speaking in French). — That is what we ask.

M. SIBILLE (France; speaking in French). — If that is what you ask, the article must be modified. An example has been furnished on the other side of the Atlantic. If I am rightly informed, a law on international traffic and railways was recently passed in the United States. Private agreements were prohibited, as has been done by you; but care was taken to add what was allowed and what was expressly forbidden after this general prohibition which you wish to incorporate in the International Railway Code. You may, perhaps, say to me, "Let us come to an agreement! Propose an amendment! Complete this article as you wish..."

M. POLITIS (Greece, Rapporteur; speaking in French). — We do not agree at all.

M. SIBILLE (France; speaking in French). — Do you not agree with me as regards the interpretation of this article? Do you wish, then, to retain the power to grant rebates?

M. POLITIS (Greece, Rapporteur; speaking in French). — Not at all.

M. SIBILLE (France; speaking in French). — Then you must explain your meaning. I say that with the text which you submit there are States—I do not say that yours is among them—there are railway administrations which grant rebates.

M. POLITIS (Greece, Rapporteur; speaking in French). — Then they are in the wrong.

M. SIBILLE (France; speaking in French). — They may be, but the fact remains. I say, "There is the evil, and the remedy which you propose is inadequate". You will reply, "Propose an amendment; we will accept it, and we will agree". No. Why? Because you put before me a provision which is contained in the Bern Convention. But this Convention is to be revised and recast in the conditions laid down by the Treaty of Versailles. We cannot carry out that revision here. These are the conditions in which, according to Article 366 of the Treaty of Versailles, the revision must be effected :

From the coming into force of the present Treaty the High Contracting Parties shall renew, in so far as concerns them, and under the reserves indicated in the second paragraph of the present Article, the conventions and arrangements signed at Bern on October 14th, 1890, September 20th, 1893, July 16th, 1895, June 16th, 1898, and September 19th, 1906, regarding the transportation of goods by rail.

If within five years from the date of the coming into force of the present Treaty a new convention for the transportation of passengers, luggage, and goods by rail shall have been concluded to replace the Bern Convention of October 14th, 1890, and the subsequent additions referred to above, this new convention and the supplementary provisions for international transport by rail which may be based on it shall bind Germany, even if she shall have refused to take part in the preparation of the convention or to subscribe to it. Until a new convention shall have been concluded, Germany shall conform to the provisions of the Bern Convention and the subsequent additions referred to above, and to the current supplementary provisions.

This article is categoric; it says, "If you wish to alter the text of the Bern Convention, you shall do so, not by means of this General Convention provided for in Article 379 but by Conventions between States which are parties to the Bern Convention, and following the invitations sent out by the Swiss Federal Council, which, according to custom, will transmit to you all the documents collected by the International Office". That is what is laid down in the Treaty of Versailles.

France is a great Power; she has colonies, her authority extends beyond Europe. As regards Europe I am quite prepared to agree to the prohibition of private agreements, but as regards railways situated outside Europe, I cannot do so. Those of our colleagues who represent countries outside Europe may tell you that outside Europe it is impossible to build railways under the same conditions as in Europe. They will add that it is usually necessary to admit these very private agreements which you wish to prohibit. They will also tell you that if the Convention is adopted, you may render it impossible to build any new railways outside Europe.

I will add that for my own part I cannot enter into the obligation to apply the Convention now before us from one day to another, not, be it noted, to the railways of Continental France, but to French railways outside Europe. Why? Because France is bound by treaties granting concessions, and because she cannot add fresh obligations to those which have already been laid down and limited by the charters of the concessions.

M. NEUJEAN (Belgium; speaking in French). — But if I understand the Convention aright these treaties are to be respected?

M. SIBILLE (France; speaking in French). — No, since you completely prohibit them when you say that henceforth there shall be no more treaties. If these treaties are respected you must prove it. Are all existing treaties to be respected? If so, this must be stated, and I cannot see any such statement when I read through your Convention. Moreover, tradition should be complied with; we should not make an International Convention relating to Railways without taking into account the position of the railway administrations. In the Report there is a statement which is very true. It is that the General Convention on International Railway Transport shall be preceded by regional conventions which will be concluded between neighbouring railway administrations. This has always been the procedure followed. Take, for example, the Bern Convention to which I have referred. This Convention was signed by a certain number of States. Did these States undertake to impose the conditions of the Bern Convention on all their railways? Not at all. Some of them had granted concessions to railways, and were not in a position to undertake to impose on these the obligation to carry on international transport traffic, from one day to another, under the conditions laid down in the Bern Convention. They might have done so by resorting to their right of sovereignty. But they would have been open to claims for compensation for loss, and claims arising from cancelled contracts.

If you examine the Bern Convention, you will see that it is only applicable to those railway lines which are indicated by the contracting States. This Convention does not come into play on all French railway systems, nor on all the railway lines of the States which signed it,—it applies only to the lines mentioned in an Annex. I ask you to take a similar course, not to make a General Convention on Transport without having consulted the principal interested parties, that is to say, the railway administrations. It is for this reason that I ask you to confine yourselves to adopting the method of recommendation. I see before me M. Lankas, whom I have known for a long time,

saying, "You are wrong; you ought to accept this Convention which I prepared at Paris with the Commission of Enquiry". I reply to M. Lankas, that I prefer to take as a text another Convention with which he is quite familiar,—a very recent Convention on Transport Traffic between Czecho-Slovakia and France. You will find there, as you will see, very detailed directions concerning the policy of France with regard to international railways and transport. France wishes to facilitate international transport; she has signed the Bern Convention, and she will shortly go to Bern, or elsewhere, to sign a new convention on international transport, that is to say to bring the Bern Convention into complete accord with the present situation. France has already taken steps to assure the application of the Bern Convention as soon as possible. The Treaty which I have read—the Treaty of Versailles—states in fact in Article 366 that the Bern Convention will continue to govern international transport; but the force of circumstances is stronger than all treaties and all Conventions. In spite of the Treaty of Versailles the Bern Convention is not applicable, and cannot be applied, on account of the conditions of the railways in Europe. But France is anxious to assure the application of the Bern Convention as soon as possible, and a Conference of railway directors was held at Paris with a view to deciding as to what measures should be taken on a provisional temporary basis to facilitate the application of the Bern Convention. I had the honour to preside at this Conference, on which sat several members of the present one. We wish to revise the Bern Convention as soon as possible, and as it cannot come into force at once, we wish to add temporary provisions in order that international traffic should be facilitated as soon as possible. You will find this, indeed, expressed in Article 1 of the Convention between France and Czecho-Slovakia. This article reads as follows :

Goods traffic between France and Czecho-Slovakia shall be carried on under the regime of the Bern Convention, on the basis of an agreement which will be concluded between the participating administrative bodies and railway companies. This agreement shall take account of the present traffic difficulties and shall in particular lay down an obligation upon consignors to notify in the waybill all the frontier stations through which the consignments are to pass.

Other articles follow. Note that this is a Convention between France and Czecho-Slovakia. Do the States concerned undertake that international traffic shall at once be carried on under certain definite conditions? No; they know that in the matter of international transport nothing can be done without the assent and the agreement of the railway administrations. The two States, therefore—France, which I represent, and Czecho-Slovakia, which is here so ably represented by my eminent colleague M. Lankas—declared in this Convention that the railway administrations would be *invited* to carry on traffic under certain defined conditions, because these two States recognise that they could do no more than make recommendations.

I would beg you to follow the example of the authors of this Convention. It is one of the latest international conventions concerning railway traffic. Follow the directions which they give you, be as far-seeing and cautious as the authors of this Convention, and say, "Yes, we intend to facilitate international traffic, and we invite all the Governments to send representatives as soon as possible to Conferences which will be held for this very purpose of settling questions of international traffic,—goods traffic, passenger traffic, interchange of stock". To repeat an idea expressed by M. Lankas at the beginning of this discussion, a conference is also essential in order to assure as soon as possible uniform regulations to govern all railway systems.

We agree on this point, but we do not go any further. Believe me, if you were to do so, you would lay yourselves open to the charge of disturbing—wantonly disturbing—the operation of railways situated outside Europe, and also to that of failing to observe scrupulously the provisions of the Treaty of Versailles. This Treaty reserves the task of ascertaining what changes are to be made in the Bern Convention, not for a conference organised by the League of Nations, but for conferences to be held at the instance of the Swiss Federal Council. These are the observations which I have the honour to submit to the Conference, and of which I trust it will take note.

M. POLITIS (Greece, Rapporteur; speaking in French). — Mr. Chairman, I am about to speak not as Rapporteur but as the Delegate of Greece. In spite of the eloquence

of the Delegate of the French Republic, I must confess that he has surprised me, I may even say disagreeably surprised me. And my surprise is the greater because it was at the instance and at the invitation of the French Government that the Commission of Enquiry on Freedom of Communications and Transit, on which I had the honour to sit, met at Paris in October 1919 (and not in February 1920), under the chairmanship of my eminent friend and comrade M. Claveille, at that time Minister of Public Works, in order to prepare the Conventions now before you. The French Delegation, which had prepared the preliminary Draft Conventions, and which, after long deliberations, during which it made every effort and expended all its energy to save and retain the most important of the principles which it had laid down, finally adopted them,—the French Delegation, I say, was composed of M. Charguéraud, whose absence from this Conference we all regret, M. Colson, Councillor of State, and the eminent Professor André Weiss. The French Government, therefore, delegated to this Commission of Enquiry men who were universally recognised as authorities on the subject. A proof of the importance which it attached to the preparation and conclusion of the Conventions with which we are now dealing is the fact that the French Delegation on that Commission, unlike the other delegations, remained in constant touch with its Government. It cannot be claimed, therefore, that it did not act in agreement with the French Government. All the States invited had no hesitation in accepting the invitation of the French Government, and in sending their delegates from the four quarters of the globe to collaborate with their French colleagues, and that at the cost of considerable financial sacrifice. Remember that our work began in October 1919 and did not end until 1920. If these States did this it was because they had become convinced that the task in which they had been called upon by France to take a part could not but be both useful and necessary for all. If, to-day, 44 States, in reply this time to the invitation of the League of Nations, have sent representatives to the Barcelona Conference, at the cost of numerous sacrifices, it was certainly not with the intention of destroying what had been created, or of adopting more or less visionary recommendations, but to discuss and conclude Conventions.

In these circumstances, to what are we to attribute the *coup de théâtre* which we have just witnessed? What are the new facts which have led the French Delegation to go back upon what the French Government so successfully began, even most commendably taking the initiative? The Delegate of the French Republic has not revealed these facts to us. The arguments which he adduced in support of the new position adopted by the French Delegation cannot constitute fresh facts, nor can they be maintained by anyone who is in a position to discuss railway questions. I do not dispute the right of any delegation to maintain any view which it considers to be in conformity with the interests of the country which it represents, but in the case of the country to whose appeal we have responded, around whom we had rallied, and with whom we have launched out in a definite direction, I venture to think that, if only to be able to state our own case, we have the right to ask it what are the reasons which have led it to detach itself, alone, from our party, while leading some of us in a totally different direction.

I will not dwell further upon this point. I raised it merely in order to justify the attitude which we took up in the past, and that which we will have to adopt here. It was to the invitation of the French Government that we replied, we collaborated with its Delegation and, following its guidance, we prepared the Draft Conventions now before us. When we separated in June 1920, and returned to our own countries, we undertook mutually to support these Draft Conventions before our Governments, and in our own case we pleaded that as France, Great Britain and all the other Great Powers, whose interests are more important than those of Greece, had already adopted these Drafts in principle, there was no reason why our country also should not adopt them.

M. LANKAS (Czecho-Slovakia; speaking in French). — Hear, Hear!

M. POLITIS (Greece, Rapporteur; speaking in French). — ...and we therefore came here, authorised and firmly resolved to adopt these Conventions finally, with certain slight alterations which we had been instructed to introduce into them, and of course so long as they were not modified to any appreciable extent.

M. SIBILLE (France; speaking in French). — I note, not without surprise, but with satisfaction, that the Rapporteur made no attempts to reply to the arguments which I expounded to you. I said, "If you make this Convention, which will in reality revise the Bern Convention, you will not be conforming to Article 366 of the Treaty of Versailles. Why? Because Article 379 does provide an International Regime for Railways which will be made under the supreme direction of the League of Nations. That is the very reason why you are at present dealing with the question of international railway traffic. But Article 366 formally reserves for the signatory Powers of the Treaty of Bern, assembled following the action of the Swiss Federal Council, the duty of modifying, if necessary, the provisions adopted in 1890 at Bern.

The argument which I presented remains unaffected. There is yet another. I said that you could not lightly apply to all the railways of the world this provision of the Bern Convention which I accepted, which I still accept, and which I should like to maintain for continental France, but which appears to me impossible of application outside Europe. You have not replied to this argument. I put forward another argument, and I now repeat it. I wish to go to Bern; I wish to go to a conference at which the signatories of the Bern Convention are to be assembled, because the provision that you wish to apply to the whole world is not applied everywhere in the same manner. There are ambiguities which must be removed. We must know clearly what it means, and I will explain.

I think that in all countries—in France at any rate—there are railway tariffs applicable to home traffic, that is to say, traffic carried on from a station situated on the territory of a State to another station situated on the territory of the same State. Then there are export tariffs, which are quite different. For these, in the interest of international commerce, substantial reductions are granted. There are transit tariffs. We have, indeed, spoken a great deal of freedom of transit, but in certain parts of Europe it is a question of who will secure transit, and railway administrations sometimes have recourse to more or less doubtful methods in order to secure transit traffic for themselves. Some transit tariffs, again, are extremely rigid. Local tariffs, export tariffs, transit tariffs are approved by the supreme authorities; in France, for example, they are approved by the Minister of Public Works, are published, and are familiar to all. All may claim the benefit of them.

What are you doing when you attempt to prohibit private agreements? This is not at all the abolition of export tariffs or of transit tariffs; it is a totally different matter. What a railway administration is forbidden to do is to say to a consignor, "If you give us goods to forward, you shall have special privileges. I shall not apply to you in all its rigour the tariff which has been published and posted up". This is prohibited, and please notice that in France this provision is included in our own tariff scales. It was also prohibited at Bern. Why? Because we do not intend a railway administration to favour one manufacturer at the expense of another manufacturer of the same country. That is what is forbidden. That is what is meant by private agreements. In France we apply this provision with the utmost strictness. You have asked why France first of all accepted this proposal and now makes reservations? I will tell you the exact reason. At the end of January 1921 the railway administrations learned that other railway administrations were not interpreting as they did this article which you wish to introduce into the International Convention. Certain railway administrations are saying, "We are applying the provision which prohibits private agreements when we require a consignor to pay the charge laid down in this tariff", and they claim that at the end of a year they may grant certain bonuses and rebates to certain large consignors. You protest against this; you say it is not possible...

M. POLITIS (Greece, Rapporteur; speaking in French). — It is possible.

M. SIBILLE (France; speaking in French). — My dear sir, that is why we have changed. A letter was brought to us in January 1921. I have no wish to denounce any individual State here; I will merely read this letter and show you that what I tell you is the absolute truth. The letter reads as follows :

In order to enable you to forward your large traffic in metallurgical products on our line, we bring to your notice below the reduced prices which we are prepared to offer you by way of rebate for your consignments as from the 20th of the present month.

The letter adds :

Requests for rebates are to be addressed to our Rebate Department, together with the relevant transport documents, within a period of one year.

That is what happens, and we wish it to stop.

You spoke of M. Colson. I do not know whether M. Colson approved of this *Green Book* commentary...

M. POLITIS (Greece, Rapporteur; speaking in French). — It was he who prepared it.

M. SIBILLE (France; speaking in French). — ...but I do know that M. Colson, when he heard of the letter to which I have alluded, said to me, "Above all, my dear friend, do not sign any Convention, because this provision which it is intended to introduce into international law must be revised, and must not be inserted in any Convention signed at Barcelona. If it were, when we go to Bern or elsewhere to raise the same question, we shall be told that we were forestalled, as the question was settled at Barcelona. We should undoubtedly be told that the signature of France was written on a Convention which enacted that no alteration should be introduced into Article 11 of the Bern Convention, and we should be obliged to comply". We do not wish this argument to be brought up against us. We intend to reserve all freedom of action, and I am therefore authorised by my Government, which has consulted all competent men in France on the subject, to oppose most categorically the conclusion here of a Convention.

The idea expressed by the Rapporteur is a very good and clear one, and I approve it. Change your first three articles,—I accept them. My whole argument bears upon Article 4; as it contains contractual provisions, alter it. Say that it would be desirable for the contracting parties to adopt certain provisions and apply certain tariffs on their railway systems; we will agree, and there will be unanimity on the point. But we cannot go further, and I declare on my soul and conscience that if you were to decide otherwise, this Convention would not receive the approval of France, and in any case I should reserve the right to attack it in other quarters, as I have attacked it here.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation greatly regrets that it cannot share the view of the French Delegation. We maintained that in Articles 1, 2 and 3 of the *Green Book* Draft it was necessary to change the words *The High Contracting Parties agree to recognise as highly desirable*, and to say *undertake to adopt*. We are, therefore, only acting consistently when we, to our great regret, vote against the French proposal. We firmly believe that it would not be in keeping with the task which the League of Nations is now rightly undertaking throughout the world to transform into mere Recommendations a Convention which we prepared with so much trouble and care, under the auspices of the League of Nations. If we accepted the suggestion made to us by the French Delegation, would there not be reason to fear that the other Convention—that on Navigable Waterways—which has given rise to so much discussion, may share the same fate also and become in its turn a series of Recommendations? If that happened, what would remain of our work? In face of the problems which are vital to the revival of normal international life, we should be giving an impression of impotence which I think it would be undesirable to give, and we should be placing weapons in the hands of enemies of the League of Nations, enemies who, as our eminent Chairman said the other day, are always on the watch against it.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — The Brazilian Delegation took up a very definite attitude in the Committee which dealt with the Draft Convention on Railways. It considers that it is in the interests of South America that this Convention should be changed to a series of Recommendations, and in that it is in complete agreement with the views so clearly expressed by the Delegate of France. I regret to be obliged to return once again to a subject which was discussed at such length in Committee, but I must state that, as far as we are concerned, we laid stress on the fact that in South America railways are still in the period of construction, that

the regimes in the various countries differ very considerably, that as regards Chile, Brazil, Venezuela and Paraguay, for example, there is hardly any similarity between the laws. As regards the provisions of Article 5, although we apply within Brazil the whole of the principles laid down therein, I do not think that South America can adopt them in so categorical a form as is indicated here.

The Italian Delegate has alluded to the Convention on Navigable Waterways, and if I understood him aright he expressed the fear that that Convention may suffer the same fate as that now before us. I do not know whether this fear is well-founded. As regards navigable waterways, the problem is notably different; it deals with laws which were drawn up many years ago and which have merely to be rendered clearer and more uniform. Moreover, on this subject we had an important precedent, the Congress of Vienna.

As regards railways the matter is quite different. In Europe the regime of railways may be said to be in its maturity; in South America it is only in its infancy. Even on the question of tariffs there are considerable differences, both in theory and practice, not only as between one country and another, but between different parts of the same country. How could we accept so definite an obligation for a regime which is only at the beginning of its evolutionary process? For this reason, returning to the proposal which we made at the time when the Italian amendment to Article 1 was discussed, we consider that this Convention should logically be transformed to Recommendations.

The Delegate of France has told us that his country, and probably the other countries also, could accept Article 4 if it were drafted in such a way as to possess clearly the character of Recommendations and not of an obligation. I entirely agree with him, and I would add that in this case logic itself bids us transform the Draft Convention into a series of Recommendations. A number of articles which, taken together, form nothing more than Recommendations, cannot be a contract, a formal engagement binding upon States, which it is customary to call a Convention. Articles 1, 2 and 3, and even 4, contain a series of Recommendations and desires, and we can reasonably accept these Recommendations and desires only in the form of an act entitled *Recommendations* and not *Convention*. I therefore ask the Conference, in conformity with the proposal submitted to the Committee during the discussion of Article 1, to change this Draft Convention to a series of Recommendations. This will in no way prejudice our attitude towards the Convention on Transit and the Convention on Navigable Waterways.

M. LANKAS (Czecho-Slovakia; speaking in French). — I regret that from the very beginning of the discussions on the Railways Convention I have been unable to share the view of the French Delegation, and in particular that of M. Sibille. I regret it even more to-day, when in the course of his brilliant speech he spoke so kindly of me. I must nevertheless engage in controversy with him, because I cannot possibly leave Barcelona with Recommendations in place of a Convention. I cannot understand why, in a practical sphere of such importance as that of international traffic, it is impossible to establish a Convention.

Before stating my arguments in favour of the Convention I think I must say a few words in reply to what was said by the French Delegate. My task will not be a very difficult one, because I do not think that he has adduced any arguments against the system of Conventions, especially in his first speech. In his second speech he attempted to prove the impossibility of making a Convention with the Treaty of Peace as a basis, Article 366 of which, he says, states that a Railway Convention must not be made because that article binds the contracting parties to adhere to the Bern Convention. This argument does not appear to me to be conclusive. As a matter of fact the Treaty of Peace and the Convention at Bern have nothing in common with the General Convention on Railways. It is therefore needless to put to us the question whether, in accordance with the terms of Article 366 of the Treaty of Peace, we should make a Convention or a Recommendation. The meaning of the Treaty of Peace is simply that the Convention of Bern, which has been denounced by France, must be renewed. I may add that the denunciation of the Bern Convention by France and certain other States has given rise to great difficulties. The authors of the Treaty, therefore, considered it necessary to say in Article 366 that the high Contracting Parties wished to renew

the Convention of Bern, and at the same time that Germany was obliged to adhere to the existing Bern Convention and to the Convention which would succeed it. But in these articles the Treaty in no way refers to a General Convention on Railways. If we conclude this Convention we shall not be contravening the terms of the Treaty of Peace. The French Delegation is confusing the General Convention with the Bern Convention; it forgets that the Bern Convention, though of great importance for international traffic, does not regulate more than a small portion of it,—the relations between the public and the railways as regards the obligation to carry, and also various relations regarding the financial side of appeals between railways in respect of through traffic. It does not regulate the international regime as a whole; in this respect it is inadequate, and it must be supplemented by other Conventions, in particular by Conventions regulating the technical operation of railways.

I now pass to the arguments drawn by M. Sibille from the clause of Article 4 on private agreements. At Paris we included this clause in the Draft Convention after having studied the Bern Convention. We thought that as this provision, which deals with equality of treatment between railway administrations and not between States, has been in force for fifty years, and as it has rendered valuable services and is generally recognised, it would be desirable to include it in our Convention. This clause concerning private agreements is, however, not the most important one. I have just discussed the matter with certain delegates, who assured me that they did not see any objection to removing it; in practice it would, perhaps, not be applicable throughout the world. We are not acquainted with American law, but Europe has no need of it, because this clause already exists in the Bern Convention. I do not know whether it could be applied in England, neither do I know whether American law does not prohibit certain secret agreements between railway administrations and consignors,—agreements concluded fraudulently, I may say. If a railway administration publishes tariffs and makes secret agreements applying other tariffs, it is committing an illegal act which is forbidden by every system of law. The provision which we recommend has no other aim than to apply to the whole world this rule which is laid down in the Bern Convention. The French Delegate pits against my argument a railway treaty concluded by Czecho-Slovakia with France. That concerns me particularly, because I was the author of that treaty from the first line to the last, and I was very happy to see it accepted without alteration by the French Government. It is a very harmless treaty, which states simply that until the Bern Convention is renewed it will be applied with the modifications rendered necessary by the difficulties of the post-war period. M. Sibille wonders why the Council of the League of Nations has invited us to make a Convention on Freedom of Transit, a Convention on Navigable Waterways, and, *if possible*, a Convention on Railways. I should be very grateful if those of you who were at Geneva would explain to me why the Council of the League of Nations added to this invitation, as regards railways, the words *if possible*.

M. Sibille has completely failed to convince me. Apart from this special agreement with which I am dealing, he has adduced no argument against the conclusion of a Convention on railways. He merely said that it would be wise for us to confine ourselves to Recommendations. Let me tell him that we came to Barcelona not to be wise, but to make Conventions. I hope that the majority of the Conference will adopt this form. M. Sibille also spoke of an international code. Our Convention never had any claim to be an international code. The international code will be established by the jurists of the Advisory Committee. What we are doing is to build a framework on which will be founded, through the action of the Advisory Committee, the international code referred to by M. Sibille. It would not even be possible for us to draw up an international railway code. M. Sibille invoked the *Green Book*, which speaks of special conventions between railway administrations. At the Paris Commission I consistently opposed the view that the special conventions referred to in Article 5 should be conventions between railway administrations. I always made it clear that the Special Conventions should be concluded not between railway administrations but between States, who should agree to invite their railway administrations to conform.

Again, M. Sibille has spoken of the revision of the Bern Convention. He said that we should not make a General Convention because there would be a Revisional Conference for the Bern Convention. I must repeat that the Bern Convention has, so to

speak, nothing to do with our Convention in the sense intended by M. Sibille. I consider that a Revisional Conference must be held as soon as possible, but the Convention which we shall conclude here will in no way prejudge the work of this Revisional Conference.

M. Sibille has pointed out that a certain number of States reserved the right to form their own railway tariff policy. He said that industries must be protected not by means of tariffs, but by the Customs regime. These are two opposite theories. I do not think that France has abandoned a tariff policy; I would not have it thought that we, who wish to include in the Convention a prohibition of private agreements, are desirous of carrying on a tariff policy in our own country by means of private agreements.

Allow me to dwell upon the necessity of concluding a Convention on railways. There is one point on which all will agree with us, namely, that international traffic must be facilitated by every possible means. We have met at an International Conference which, according to what we have been told of the spirit of Geneva, will probably not meet every year. Ought we not to utilise the present opportunity to do all in our power to facilitate international traffic? I think we are under obligation to do so. If we succeed in concluding a Convention, it will help to facilitate international traffic. There is only one argument which I admit against this Convention, namely, that it is not very elegant, and that therefore it has pleased hardly anybody. Why is it not elegant? Probably because a world-wide Convention could not possibly be made in a more developed form.

What does this Convention contain? In the first three articles it unfortunately contains recommendations. We, in common with the Italian Delegation, thought that it would be possible to undertake certain engagements. We were supported by the Delegate of Greece, who is now our esteemed Rapporteur, but the American States did not see their way to accept the obligatory form for these three articles, and the Committee realised that we should have to confine ourselves to expressing recommendations. These first three articles all deal with the technical measures to be taken with a view to facilitating international traffic,—the treatment of goods en route, transshipment, when this operation cannot be avoided—it being implied that this should be avoided whenever possible—the form of international tariffs and their application. The American States declared that in view of the laws of their countries, they could not accept an obligation; they could only accept a recommendation. That is what Article 2 says.

Articles 1 and 2 offer a certain analogy with the Bern Convention. They refer to the extension of the scope of the Bern Convention in order that the greatest possible number of States might become parties to it. That is the meaning of the words *subject whenever possible to the same obligation*.

Article 2 contains an important provision referring to the extension of the scope of the Bern Convention, not only as regards the number of States to adhere to it, but also as regards the matter itself; Article 2 implies a recommendation that a convention should be concluded on passenger and luggage traffic. The American States have also declared that they cannot accept Article 2 in an obligatory form, but they have accepted it in the form of a recommendation.

Article 3 deals with technical questions which—and I wish to emphasise this point—were not regulated by the Bern Convention on International Transport, but, as far as Europe was concerned, were regulated by the Bern Convention on Technical Unity, which is not the Convention referred to by the French Delegate. In our opinion Article 3 might, particularly as regards contiguous territories, assume an obligatory form; but we withdrew our amendment, and we subscribed to this article as drafted in the *Green Book*. The Delegations of the South American countries accepted it in the form of a recommendation.

As regards Article 4 (now Article 5) I had hoped that the first part of this article, which is obligatory in form, might be accepted in that form by the American States. The Brazilian Delegate gave us to understand that he desired the general application of the principle of equality, even as regards a through journey. I hoped, then, that the principle of equality of treatment as regards tariffs—an equality which, as it would be applied under Article 5, would be very restricted—might be applied in America,

and that it would not be in conflict with any institutions or laws because it merely states that no distinction must be made based upon nationality. We were unable to agree to the extension of this principle; in conformity with the proposal of the British Delegation, we left it in the *Green Book* form. I repeat that I believe that this principle could be accepted without difficulty by the delegations of the South American countries. Finally there is the last sentence of the first paragraph, which speaks of *any private agreement having as its object the granting of rebates to one or several passengers, or to one or several consignors...* I think that this clause is applied both in England and America, and that private agreements which are at variance with duly published tariffs are forbidden. I should like to remove one ambiguity. It is not duly published bonuses which are forbidden; duly published rebates are allowed even when such rebates can in practice only be applied in favour of certain classes of consignors or even to a single consignor. What is forbidden is tariffs which would be in force for any one firm or group of firms, but I think that treaties clandestinely concluded between railway companies and consignors are forbidden in Europe as well as in England and America.

I now come to Article 4 (formerly Article 5), which in my view is the most important one. It is the article which speaks of Special Conventions. Articles 1, 2 and 3 cannot be applied in America, but can in Europe. If we desire so strongly to keep the word Convention, it is because we wish through this Convention to impose on all States the obligation to conclude in future special conventions in respect of groups of contiguous territories applying the principle of Articles 1, 2 and 3. It is not stated to what extent this obligation should exist, but I think that what it means is that it should be applied as far as is possible. We are thus under obligation to make regional conventions, European Conventions—in the case which I have in mind—to regulate the railway question. This for me is the most important point, and it is Article 5 which must form the nucleus of future railway conventions. It is for the sake of this article that it is essential to keep our work in the form of a Convention, and not to remain content with *recommendations*. Moreover, in Sub-Committee the Brazilian Delegate spoke not of a *vœu* but of recommendations, in the sense of Article 405.

M. SIBILLE (France; speaking in French). — No, no.

M. LANKAS (Czecho-Slovakia; speaking in French). — Taken in this sense, this recommendation is fully as binding as a Convention, and we should perhaps be satisfied if this Convention were to be in the form of a Recommendation as laid down in Article 405 in the Treaty of Versailles, which deals with the organisation of labour. But I think that will be impossible,—everything would have to be done over again. I will conclude my remarks, which have already, I am afraid, lasted too long, by again asking you to leave this unoffending and harmless Convention in the form of a Convention.

M. CARLIN (Switzerland; speaking in French). — I have listened with great attention and interest to the arguments for and against the proposal of the French Delegation, and I have been wondering the whole time whether there may not be any means of finding some common ground of understanding on the following lines: the title of Convention would be maintained in order that those of us who wished to return home with a document bearing the title of Convention should be satisfied. On the other hand, and in order to balance this concession on the part of the French Delegation, we should use in Article 5 the formula *highly desirable* which has been used in the other articles. That is my proposal, which I make with the desire that, if possible, an understanding should be arrived at and a unanimous vote secured.

The PRESIDENT. — If I understand aright, M. Carlin proposes a compromise, as regards form, which would consist in giving Article 5 a text similar to that of Article 1, that is to say: *The States consider as highly desirable*. The text as a whole, thus modified, would assume the character of a series of Recommendations (we must speak of things as they are) but would retain the title of a Convention; this would have the effect of linking it up with the body of the work which we are doing, while at the same time reducing it one stage lower as regards sanctions. However, a Recommendation is

not a document to be despised, and moreover this decision would be in conformity with the instructions of the Council, and also with the conditions under which we were summoned; the word *recommendation*, in fact, actually occurs in the Geneva resolution upon which our work is based.

M. LANKAS (Czecho-Slovakia; speaking in French). — You say that this decision would be in conformity with the invitation which was sent to us, but would this Recommendation be of the same character as that referred to in Article 405?

The PRESIDENT (speaking in French). — In the first place I did not use the word *invitation*; I would not have ventured to say that the Council *invited the Conference*. I said that in the text in accordance with which we are constituted, the word *recommendation* was used to mean a possible result of the deliberations of this Conference.

M. LANKAS (Czecho-Slovakia; speaking in French). — But is this Recommendation of the same character as that in Article 405 of the Treaty of Versailles?

M. SIBILLE (France; speaking in French). — Article 405 refers to something entirely different. It refers to the organisation of labour.

M. LANKAS (Czecho-Slovakia; speaking in French). — The word *Recommendation* is new; it is an innovation of the Treaty of Peace, and I think it will produce effects which will be international.

The PRESIDENT (speaking in French). — That is not the point. I simply referred to the text of Resolution c) of the Assembly relating to the organisation of Communications and Transit. It states... (2) *determine under the same conditions whether the measures which it elaborates shall take the form of... or of recommendations...*

M. LANKAS (Czecho-Slovakia; speaking in French). — An analogy has always been established between the work of Labour and ours. I do not see why the Recommendation should not be of the character which it possesses in Article 405. I would remind you that the Brazilian Delegate expressly states that he proposed to give the Convention the form of a recommendation in the sense of Article 405.

The PRESIDENT (speaking in French). — That is not what we are discussing. We are discussing a proposal by M. Carlin that the new Article 5 should be modified in such a way that its text should include the words *highly desirable*, as does Article 1.

M. LANKAS (Czecho-Slovakia; speaking in French). — I accept that.

M. CARLIN (Switzerland; speaking in French). — In the discussion which has arisen I am afraid that there has been a misunderstanding in connection with my proposal. I thought I had made it quite explicit, but there would perhaps be no objection to my repeating it. It is inspired solely by a spirit of conciliation, and is to the following effect: the text which we are now discussing to retain its title of Convention, if the French Delegation agrees, but the Conference to make the concession to that delegation that Article 5 (formerly Article 4) would be drafted in the form of a *vœu*, as are Articles 1 to 3. That is a clear statement of my proposal, and I repeat it because the President did not make clear the new wording of the former Article 4, whereas I link the two things closely.

The PRESIDENT (speaking in French). — Does M. Sibille agree to retain the title?

M. SIBILLE (France; speaking in French). — It must be quite clear that we are only making Recommendations, and that there is no obligation.

The PRESIDENT (speaking in French). — The question must be clearly stated. M. Carlin proposes, for the sake of conciliation, that on the one hand the Draft should

keep its title of *Convention*, and that therefore it should be a *Convention*; and that, on the other hand, Article 3 (formerly Article 4) should be drafted in the form of a *vœu*.

M. CARLIN (Switzerland; speaking in French). — Exactly.

The PRESIDENT (speaking in French). — These provisions as a whole would then constitute no hing more than a collection of Recommendations. The question is whether, from the point of view of the consistency of our work, this does not involve a series of consequences which might induce certain of us who are well disposed, to regard this text as possible. I should therefore characterise this proposal as—what it really is—a conciliatory proposal, and I will say no more.

M. NEUJEAN (Belgium; speaking in French). — I was very greatly impressed, and my faith was almost shaken at one moment, by M. Sibille's speech. No-one has greater authority than he to speak as he has done. Moreover, as this is a question of the French Delegation, the delegation of that great country which we love with all our heart, I also should like to find some method of conciliation, and I should like to fall in with M. Carlin's views. But frankly I hesitate to do so. M. Carlin, whose spirit of conciliation I appreciate, has said that those who desire a *Convention* will return home with a *Convention*. But we must also admit that those who have sent us here have some intelligence and judgment. When they read our *Convention* they will see in Article 1... *recognise as highly desirable...*; in Article 2... *recognise as highly desirable...*; in Article 3... *recognise as highly desirable...*; in Article 4... *recognise as highly desirable...*; in Article 5... *as far as possible...*; in Article 6... *recognise as highly desirable...*; Can we make them believe that they have a *Convention* before them? Let us be reasonable, and let us not deceive ourselves; that is not a *Convention*.

If we wish for a measure of conciliation—and whatever my feeling is, I incline in this direction—let us leave Article 4 as it is—it cannot be a great objection in M. Sibille's eyes—in fact, in his second speech he put forward an argument to this effect—by saying that his very object was equality of treatment. He wishes this Article 4 to be a minimum with more rigorous sanctions than the next Bern *Convention*. Let us keep Article 4 as it is, and, in order to make a concession to the French Delegation, let us entitle the text *Recommendations* instead of *Convention*. I should prefer that. If we did so we shall at least be logical, and it would be a conciliatory course to take. But do not let us speak of a *Convention* when our six articles are in actual fact *Recommendations*. This appears to me impossible, however desirous I may be of satisfying the French Delegation. I therefore appeal to all to ask for this concession, and to use the term *Recommendations on the International Regime of Railways*. The President, with his high authority, has shown that *Recommendations* are one of the forms provided for in the texts which serve as our mandate. Let us therefore use this form, and we shall be logical.

M. LANKAS (Czecho-Slovakia; speaking in French). — I would simply observe that, when I said that I accepted M. Carlin's proposal, it was because he says that the article concerning tariffs ought to be cited in the article dealing with special *Conventions*. We ought, therefore, either to make Article 4 follow Article 5, or we should insert in Article 4 (formerly Article 5) the words *in the absence of any Convention providing for the application of the principles laid down in Articles 1, 2 and 3 of the present regulations, special Conventions shall provide for...*

I take advantage of the present opportunity to say that I very greatly regret my inability to accept the amendment of the Belgian Delegate, as this amendment changes the character of the *Convention*.

Sir Hubert LLEWELLYN SMITH (Great Britain). — In a spirit of conciliation, which I am the first to recognise, the Swiss Delegate has made a proposal which, if I rightly understand it, is to convert the railway clauses into *Recommendations*, but still to call them a *Convention*. I do not think we shall make progress in this direction. Perhaps it is one of our national characteristics to value the substance much more than the form; but I do think that any instrument on which we agree ought to have the title

which rightly corresponds to its contents. If there are obligations, let us call it a Convention. If there are no obligations, let us call it a Recommendation. But do not let us deceive ourselves by terming a Convention what is really not a Convention at all. Therefore, I still think that the question lies between the advocates of a Convention and the advocates of Recommendations. I should like to say at the outset that it would be a matter of very great regret to the British Delegation, as also to many other delegations here, if all the efforts which have been made at the present Conference to come to an agreement with regard to the international regime of railways should result in nothing but a set of Recommendations. I am bound to add that, much as I appreciate the skill and ability shown in M. Sibille's speech, I was not convinced by any of his arguments that this course is either necessary or desirable. But while I was certainly not convinced by the arguments used (which I think could all be answered), I was greatly struck by the fact, which must be evident to everyone who listened to M. Sibille, that, for some reason, which to the French Government evidently appears conclusive, the French Delegation is unable to give its adherence to a Railway Convention concluded at Barcelona. That is the fact which we have to face. The discussion has shown that at least one delegation follows France, and that certain other States—how many we do not know—will be actuated by some reason which no doubt appears to each to have great weight; and so, in the fifth week of our Conference, within, as we all hope, a few days of our departure from Barcelona, we are faced by the extremely unwelcome choice between taking our chance of a convention, which even its most ardent advocates would hardly say is a very satisfactory document, and which we now know will at best only be adopted by a majority, and a Recommendation, which, though of much less value, can at least, I hope, be unanimous. The gist of the matter is the value which we attach to unanimity as compared with a division in our ranks. I attach very great value to unanimity, and in these circumstances the question, and the only question I ask myself is, whether there is any value at all in a Recommendation? We have considered that question at length and in detail amongst ourselves, and, on the whole, the conclusion of the British Delegation is that Recommendations on international railways would be slightly better than nothing at all. In these circumstances, though with great regret, the best advice that I can give to the Conference is to waste no more time, but to ask the Drafting Committee at once to transform such of the articles of this Draft Convention as lend themselves to the process, into the form of a Recommendation, which we can then accept or reject. Then let us turn to a more useful and fruitful part of the business which we are here in Barcelona to transact.

M. LANKAS (Czecho-Slovakia; speaking in French). — I cannot possibly accept the Recommendations for the Regime of Railways. I very greatly regret that I am obliged to make this statement. I consider that there is one article of very great importance in the Treaty of Versailles,—Article 379. I will not dwell upon this further, but, basing myself on this article, I say that a General Convention on the International Regime of Railways must be established. I must have a Convention, even if it contains nothing more than Article 5, which refers to the conclusion of Special Conventions. I think that according to M. Carlin's proposal we may without difficulty conclude a General Convention which will contain a series of *vœux*, but which, in Article 5, will establish an obligation to conclude special conventions putting into practice the *vœux* formulated in the other articles. I again wish to express the regret that I feel in not seeing my way to accept a compromise, and I make every reservation as regards signing Recommendations.

The PRESIDENT (speaking in French). — It is growing late. I think there would be no objection to referring this debate to the Railways Committee. As the British Delegate observed, we cannot, I think, vote on the text, because, if we are to make Recommendations, the text must be changed and be given that form. There is also M. Carlin's amendment, which I cannot drop on my own authority. I think that the Committee might be asked to meet to consider it, and possibly to change the text of the Convention into Recommendations. Let the question be referred to the Railways Committee, or to the Drafting Committee; but in any case the change must be made. It is a practical impossibility to draw up a text in plenary meeting. The Railways

Committee is competent, and is thoroughly acquainted with the subject. I propose to entrust it with the task of making the necessary change and considering M. Carlin's amendment. It will set aside this amendment if it so desires; if, on the other hand, it thinks that it should be kept, it will do so.

M. SCASSI (Greece; speaking in French). — I think that the proposal to refer the whole Draft to the Drafting Committee would not have the effect of shortening the discussion, but would, on the contrary, prolong it. The question of principle remains untouched, and it is the Conference alone in plenary meeting which is qualified to settle it. I propose, therefore, that a vote be taken at once on the question of principle. In my view this would be the most practical method of shortening the debate. There is no occasion either, I think, to refer M. Carlin's amendment to the Railways Committee. I do not see the use of doing so. I fully appreciate the spirit of conciliation which dictated it, and I realise my Swiss colleague's intention; his proposal, will he allow me to tell him, would be equivalent to saying that the cow makes the monk. We should be drafting a series of Recommendations, which we should afterwards baptise with the name of a *Convention*. Of course we should not keep this work to ourselves; it would be published. I think that would be absolutely impossible, and I therefore propose that the question of principle be put to the vote.

M. BARBOZA CARNEIRO (Brazil; speaking in French). — I was about to make the same proposal as that of the Greek Delegate. I think that a vote on principle would be enough. We must settle the question whether we are dealing with a *Convention* or with Recommendations. We will then vote on the Swiss amendment.

The PRESIDENT (speaking in French). — I think we must vote on the amendment first. M. Carlin has not withdrawn it, and I cannot possibly eliminate an amendment.

M. BIGNAMI (Italy; speaking in French). — We have come to a moment which I think is a very difficult one for the League of Nations. Let us be candid and confess that it has been dealt a serious blow. What we are about to propose to our respective Parliaments is something which will lead each of the Members of those Parliaments to wonder whether it is worth expending so much money on the League of Nations if we are only to achieve results such as this. I consider that a vote must be taken on the proposal which is furthest from that before us, that is to say, on that of the French Delegation, which consists in giving the name of Recommendations to the Convention which has been submitted to us.

The PRESIDENT (speaking in French). — Both views may be upheld. I do not press my own. As a rule a vote is taken on amendments; but it is clear that, logically, as the proposal of the French Delegation is furthest from the proposal of the Committee, the other view may also be upheld. If the Conference decides to vote now, we will put to the vote the proposal of the French Delegation, and I will ask M. Sibille to indicate to us exactly the form which is to be given to it.

M. SIBILLE (France; speaking in French). — I think that my amendment might be submitted in the following form :

All the provisions with regard to the International Regime of Railways shall be submitted in the form of Recommendations.

I do not ask for any change in the first three articles.

M. LANKAS (Czecho-Slovakia; speaking in French). — Are there any changes in Articles 4 and 5?

The PRESIDENT (speaking in French). — There is no question of that now. The whole text of the Draft Convention is accepted, and what is asked is whether it shall be changed into Recommendations as it stands.

M. SIBILLE (France; speaking in French). — I ask that all the provisions submitted to us shall be referred either to the Railways Committee or to the Drafting Committee, in order to be put in the form of Recommendations.

M. LANKAS (Czecho-Slovakia; speaking in French). — That is an answer to my question. I am now enlightened on the point.

The PRESIDENT (speaking in French). — The Conference now has to decide whether it wishes the Draft to be referred to the Drafting Committee or to the Railways Committee in order to be transformed into a series of Recommendations.

M. SIBILLE (France; speaking in French). — I think that we may at once agree to refer it to the Drafting Committee; as the Railways Committee has given its decision on all the provisions, there is no longer any question but of adjusting the wording. The Drafting Committee is better qualified to do that than the Railways Committee.

The PRESIDENT (speaking in French). — We will consult the Conference, then, as to the following formula, which appears to me to be most exact :

The French Delegation proposes that the texts submitted to the Conference by the Committee on Railways be referred to the Drafting Committee in order to be transformed to a series of Recommendations.

M. SIBILLE (France; speaking in French). — Exactly.

M. CARACOSTEA (Roumania; speaking in French). — Of course there will be no fundamental change.

The PRESIDENT (speaking in French). — The Drafting Committee will modify the form of the text in order to turn it into Recommendations.

M. BIGNAMI (Italy; speaking in French). — I ask for the vote to be taken by roll-call.

M. LANKAS (Czecho-Slovakia; speaking in French). — I make the same request.

The PRESIDENT (speaking in French). — Two requests for a roll-call have been put to me, one from M. Bignami, Delegate of Italy, the other from M. Lankas, Delegate of Czecho-Slovakia. We will now take a vote by roll-call. The members will answer yes or no according to whether they accept or reject the proposal of the French Delegation.

Albania	No	Greece	No
Austria	Yes	Guatemala	Yes
Belgium	Abstention	Haiti	Yes
Bolivia	Yes	Honduras	Yes
Brazil	Yes	India	Abstention
Bulgaria	No	Italy	No
Chile	Yes	Japan	Abstention
China	Yes	Latvia	No
Colombia	Absent	Lithuania	Abstention
Costa Rica	Absent	Luxemburg	Absent
Cuba	Yes	Netherlands	No
Czecho-Slovakia	No	Norway	No
Denmark	No	Panama	Yes
Esthonia	No	Paraguay	Absent
Finland	Absent	Persia	Yes
France	Yes	Poland	Yes
Great Britain	Abstention	Portugal	Absent

Roumania.	Yes	Switzerland	No
Serb-Croat-Slovene State . . .	Yes	Uruguay	Absent
Spain	Yes	Venezuela	Absent
Sweden	No		

The result of the vote by roll-call is therefore :

Yes.	16
No.	12
Abstentions	5
Absent	8

M. POLITIS (Greece, Rapporteur; speaking in French). — As a two-thirds majority has not been obtained, the proposal of the French Delegation cannot be adopted.

M. WINIARSKI (Poland; speaking in French). — Could not those States which were absent when the roll-call was taken give their vote later?

The PRESIDENT (speaking in French). — That is impossible. It has been possible to do it in respect of questions which have not given rise to discussion, but as there has been opposition, States absent at the time when the roll-call was taken cannot now vote.

M. SCASSI (Greece; speaking in French). — Then what is the result from the vote?

The PRESIDENT (speaking in French). — I ask the Conference to authorise the Officers of the Conference to postpone the announcement of the vote until to-morrow, in order that they may consult the Rapporteur for the Rules of Procedure, M. Ferraris, who is not here at the moment. The vote will therefore be registered as it stands, and the announcement of it will be made to-morrow, after consultation has been taken with the Rapporteur for the Rules of Procedure, who will inform us of the exact significance of this vote.

The meeting adjourned at 8.25 p.m.

TWENTY-FIFTH MEETING OF THE CONFERENCE

(Thursday, April 14th, 1921, at 4 p.m.).

DISCUSSION ON TRANSFORMATION OF CONVENTION INTO RECOMMENDATIONS (contd.)

The meeting opened with M. Hanotaux, President, in the Chair.

DISCUSSION ON TRANSFORMATION OF CONVENTION INTO RECOMMENDATIONS (contd.)

The PRESIDENT (speaking in French). — Following upon the vote of yesterday evening, the significance of which the Conference was unable to determine, we consulted personally the Chairman of the Jurists' Committee, Sir Cecil Hurst. I call upon him to address the meeting.

Sir Cecil HURST (Great Britain, Chairman of the Jurists Committee; speaking in French). — I can only give you my personal opinion; the Jurists' Committee has not been apprised of the question and has not considered it. As I was absent at yesterday's meeting, I referred to the record of the meeting, and on reading it I found that it was extremely difficult to determine the exact significance of the vote taken by the Conference. You are aware of the terms of the Rules of Procedure and of the Scheme of Organisation. Certain questions require a two-thirds majority, and certain others an absolute majority, while for others again a simple majority is sufficient. In what category must yesterday's vote be placed? As a jurist, I candidly confess that I find it very difficult to give an exact answer. If those who voted yesterday thought that it was merely a matter of referring a question to the Drafting Committee with a view to preparing a new text, a simple majority would have been sufficient. If, on the other hand, the Conference considered that it was taking a decision on the question of the form to be given to these articles, a two-thirds majority was necessary. But I repeat that from an analysis of the discussion it is very difficult to be sure of the intentions of the Conference, and I hope that the Jurists' Committee will not have this task placed upon them.

The PRESIDENT (speaking in French). — The Drafting Committee found itself in the same difficulty as the Jurists. This difficulty, moreover, is a general one; the two cases defined by Sir Cecil Hurst were both stated before the vote was taken. As a result, everyone interpreted the vote as he pleased, according to his own opinion. In these circumstances, with a view to avoiding a difference of opinion in the Conference, and in order to secure a unanimous vote, the Officers of the Conference have considered it their duty to make an appeal to the Conference for agreement, and respectfully to submit to it a proposal with the object of combining the two cases before it. I will read this proposal :

Pending the conclusion of a General Convention concerning railways, the Conference has adopted the following articles as Recommendations.

This text may help us to find a way out of a situation from which there seemed no escape, and may enable us to arrive at as satisfactory a result as possible.

M. LANKAS (Czecho-Slovakia; speaking in French). — There is no doubt whatever. We voted yesterday on the principle of the question. I myself strongly urged that the situation should be made clear, and that we should ascertain whether we were voting on a mere question of a reference to a Committee or to the Drafting Committee, or whether we were voting on the principle, that is to say, on the question whether the whole Convention should be changed into Recommendations or not. I have no doubt that a two-thirds majority was necessary; we were dealing with the main question,—a question of principle, an important question. I cannot accept the formula proposed by the Officers of the Conference; the word *pending* would never be anything more than a word, we should certainly have to wait more than three and a half years, and in the meantime the five years provided for by Article 379 of the Treaty of Versailles would expire.

As regards the principle of the question, may I say that the formula which I think would secure if, not unanimous acceptance, at least acceptance by a large number of delegations, is the formula proposed by M. Carlin. The only objection raised to it is that we should thus have a Convention containing four Recommendations. But that would at any rate be something, seeing that this Convention is to be a world-Convention and that we must repair the error of the authors of Articles 379 of the Treaty of Peace, without considering that it would be very difficult to make a General Railway Convention which could be a world-Convention. If this Convention is to have a world-wide scope, I consider that we can only have Recommendations in these four articles, but in the article dealing with Special Conventions, which says that States are obliged to conclude regional Conventions, it should be otherwise. Indeed, the most important point in our text seems to me to be this article which deals with Conventions and which ensures the application to contiguous territories of the principles laid down in Articles 1 to 4. These principles, expressed in the form of Recommendations, cannot at present be applied throughout the world, but they may quite well be made the subject, as far as possible, of Special Conventions relating to contiguous territories,—in Europe, for example. I think, therefore, it is quite possible to make a Convention containing these most important Recommendations and this article as well.

I must say that, with the best will in the world, I cannot understand why the French Delegation still opposes it. If I understood M. Sibille aright, his principal objection is to Article 4 in its obligatory form. If a mere Recommendation were expressed in the article referring to tariffs, I cannot see why the French Delegation should object to it, and I venture to express the hope that the French Government, which had no intention of signing here at Barcelona either a Convention or a Recommendation, would, if this were done, adopt this standpoint. I would urgently beg you, then, to consider M. Carlin's proposal again, and to vote for it. It consists in changing the article dealing with tariffs to a simple Recommendation, mentioning the article on tariffs in the article referring to Special Conventions. This is the only solution I could accept, and I must state that our delegation, which was given instructions to sign a Convention, could not accept Recommendations. I therefore propose to the Conference to accept the suggestion made by M. Carlin.

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation is ready to accept a compromise, as it is convinced of the desirability for a Conference such as this to vote unanimously, or almost so, whenever possible. But the Italian Delegation must make a few observations. In the first place Sir Cecil Hurst's speech is the best possible proof of the necessity of making some change in the Rules which we have laid down. If the Rules of Procedure cannot be brought into accord with the Scheme of Organisation, if we find, on the first occasion when it has to be applied, that it is inapplicable, some part of it must be changed.

The PRESIDENT (speaking in French). — There was some misunderstanding as to the manner in which the vote was put. I ought to have said : It is clearly understood that this is a vote on principle, or that it is a vote on form.

The mistake does not lie in the Rules, but in the manner in which I stated the question. I hope you will pardon my lack of experience and my failure to make the distinction clear. The mistake was due to that, and not to the Rules, the application of which is quite clear when the question is properly put.

M. BIGNAMI (Italy; speaking in French). — The President is attempting to take upon his own shoulders the blame for a mistake for which he was in no way responsible. This was plainly a vote on principle, and I fail to see the distinction drawn by the Jurists' Committee. However, I do not press the point, as the President thinks that it was he who should have put the question differently, and I return to the point which concerns us now.

I think that we can accept the proposal of the Officers of the Conference, but we must fix a date. What does *pending* mean? A recommendation such as this would indeed be far too indefinite. Problems such as those of railways and navigable waterways are positive ones, and I cannot understand there being any question of Recommendations in respect of them. We must remember that each of us, on behalf of the State which he represents, has made sacrifices. Each State has sacrificed part of its liberty. If we make Recommendations, what will be their value? I see none. A State may be prepared to apply a Convention and may not be prepared to accept a Recommendation, because the form *Convention* implies an obligation on the co-contracting States who accept reciprocal obligations. But what does the form *Recommendation* mean? Very little; a State cannot renounce anything unless other States also make renunciations as the equivalent which the first State is entitled to demand. It is clear that no-one will make sacrifices without being sure that similar sacrifices will be made on the other side. For this reason I think it is desirable to fix a period—a year or two years perhaps, but not longer—within which another Conference must be held. We should thus have a concrete formula on which we could vote. The other formula would be nothing but a futile recommendation, because it would have no absolute value for the various nations. If we accepted it, we should be doing something of very little practical use. That is the proposal which I venture to make, and which I hope the Officers of the Conference and the meeting will accept.

M. SIBILLE (France; speaking in French). — Two opposing cases were put and argued before the Conference yesterday. Some of us—myself amongst the number—maintained that we should confine ourselves to making Recommendations; others maintained that it was a Draft Convention which was called for. Then the Swiss Delegate, M. Carlin, submitted a proposed compromise. This proposed compromise, to which M. Lankas wishes to return, was opposed by the Delegate of Greece in terms which I think I should bring to your notice (1).

There is no occasion either, I think, to refer M. Carlin's amendment to the Railways Committee. I do not see the use of doing so. I fully appreciate the spirit of conciliation which dictated it, and I realise my Swiss colleague's intention; but his proposal, will he allow me to tell him, would be equivalent to saying that the cowl makes the monk. We should be drafting a series of Recommendations, which we should afterwards baptise with the name of a *Convention*. Of course we should not keep this work to ourselves; it would be published. I think that would be absolutely impossible, and I therefore propose that the question of principle be put to the vote.

The meeting then showed its approval of this in different ways. Why? Because the representative of Greece was supported by the advocates of both causes. And as M. Lankas has said, a vote was taken, as the Greek Delegate proposed, on the question of principle. What was the result of the vote? For the proposal to change all the provisions into Recommendations, sixteen votes; against, twelve votes; abstentions, five. Thus, as you see, there was a sufficiently large majority in favour of the change to Recommendations.

The Officers of the Conference did not see fit to announce the result of the vote. Why? Because the Rapporteur then said, "There is no need for an absolute majority;

(1) See p. 131.

what is needed is a two-thirds majority." Gentlemen, it is for the Officers of the Conference to settle the question, and I consider that I need not argue it further before this meeting.

What is the result of the vote taken yesterday? The result, it must be confessed, is that there is no large majority in favour of either system. We must reach an understanding. Very well; it is for the Officers of the Conference, who direct our debates, to find a formula which can be accepted by a large majority of the Conference, if not unanimously. This formula has been submitted to you, and for my part I accept it, in a broad conciliatory spirit. I notice that M. Lankas does not accept it. Well then,—I am more open to conciliation than he. I accept the compromise proposed by the Officers of the Conference, and let me tell you that I shall thereby find myself in agreement with the Delegate of Italy, who was yesterday amongst my contradictors and adversaries.

The Italian Delegate made one observation, the fairness of which I cannot but acknowledge; he said, "You speak of a Convention to be made within an indefinite period". In my view the Italian Delegate was right in saying that more precision is necessary, that it must be stated that the Convention shall be made within the period of one or two years. I think that the period should be fixed at two years. I am convinced that within two years, and perhaps within one, we shall be in a position to prepare this great General Convention on Railways which we all desire. Why? Because in a year's time the revision of the Bern Convention of which I spoke yesterday will probably have been begun. Belgium has already completed her work of revision of this Convention. I think that Italy also has terminated her labours. I may add that we shall shortly finish it in France too. We have already terminated our study of the Convention on the Transport of Passengers and Luggage. We are at present in course of considering the Convention on the Transport of Goods, and I think that, I will not even say in a few months, but in a few weeks, we shall have drafts which we shall be able to submit, in accordance with custom and tradition, to the International Railway Office. Then we shall be able to meet at Bern.

I therefore accept the proposal submitted by the Officers of the Conference, with the amendment proposed by the Italian Delegate. You will see that I am acting here in a broad spirit of conciliation, and this proves that I am amongst those who desire an agreement to be arrived at by a large majority, for do not forget that we must have a two-thirds majority. Yesterday I think it was not necessary; but at the last, for the final vote, a two-thirds majority must be obtained. You who are submitting a Draft Convention cannot hope to obtain two-thirds of the votes, since yesterday you could not even obtain a relative majority. Why not then be wise and give your support to the plan proposed by the Officers of the Conference,—a plan which has been made in a broad spirit of conciliation and which I, for my part, accept, I repeat, together with the amendment of one who yesterday was my opponent,—the amendment of the Italian Delegate?

• M. LANKAS (Czecho-Slovakia; speaking in French). — Allow me first of all to assure the Delegate of France that if I were in his place I should be as disposed to conciliation as he is. The formula which has been proposed is his formula. I think that it needs very rosy optimism to hope that in a year or even two years' time we shall be able to adopt a General Convention on Railways which is to be better than that which we are considering to-day. I do not share that optimism, and I think that when you have read the complete record of yesterday's meeting the optimism which you evince will depart; if ever anything resembling a General Convention on Railways could have been adopted, it would have been at that meeting. For my part I very strongly doubt whether we can be called together in two years, and I therefore cannot see any possibility of concluding a fresh Convention within that period.

I would venture to point out to M. Sibille that in my view there is no connection whatever between the Revisional Conference of Bern and our General Convention. I beg M. Sibille's pardon, but I think he continually confuses the Bern Convention with the General Convention.

When I examine the Italian proposal I ask myself what it means. What will happen at the end of two years? If I have understood aright, our Convention will

take the provisional form of Recommendations during that period. When the period has expired, will the Recommendations automatically change to a Convention, or must the Council of the League of Nations summon another General Conference, which will have the task of concluding a Convention on Railways? I do not understand the purport of this proposal, and even if I did, not being an optimist, I greatly regret that I could not support it.

The PRESIDENT (speaking in French). — If we drew up as a text the ideas expressed by M. Bignami and M. Sibille, a wording something like the following might be submitted to the meeting :—

It being understood that the General Convention or Conventions on Railways will be concluded within a period not exceeding two years, the Conference adopted the following articles as Recommendations.

If this text, which is purely provisional, meets the views of those who have expressed their opinion, we might, as we are attempting a compromise, put it to the vote. It would thus become a proposal of the Officers of the Conference, to whom the question was referred.

M. ORTUÑO (Spain; speaking in French). — I should like to know what body will draft this Convention—a new Conference, or the Advisory and Technical Committee?

The PRESIDENT (speaking in French). — I do not think it is possible to prepare a Convention when only twelve votes have been cast in favour of this proceeding. We can only tell the States that a Convention must be drawn up within a period of two years. As to who is to draw it up, that question depends on the relations between the technical organisations and the Council of the League of Nations. That is the answer to M. Ortuño's question.

M. ORTUÑO (Spain; speaking in French). — Then is our Conference expressing a *vœu*?

The PRESIDENT (speaking in French). — It is more than a *vœu*. After having left the Barcelona Conference, we shall all bring to the notice either of the Council or of our respective Governments the fact that our Conference could not agree upon a text except on condition that one or more Railway Conventions should be prepared within a certain period. Accordingly preparations will be made to draw up the Convention or Conventions within the period fixed. Of course no State can be forced to sign a Convention if it does not desire to do so. No-one under the sun can be coerced.

M. ORTUÑO (Spain; speaking in French). — Of course not. According to what the President has said, it would appear that if the desire, the recommendation, the wish of this Conference is that within a period of two years a Convention shall be made, will the body appointed to draw up this Convention be a fresh Conference?

The PRESIDENT (speaking in French). — Obviously.

M. ORTUÑO (Spain; speaking in French). — ... that is to say we must fix a period within which a fresh Conference must be held...

The PRESIDENT (speaking in French). — Exactly, in so far as the body of organisations concerned consider that they should do so.

M. ORTUÑO (Spain; speaking in French). — We shall say that in a period not exceeding two years a fresh Conference must be held.

VARIOUS DELEGATES. — Yes, Yes!

The PRESIDENT (speaking in French). — After having considered the formula proposed by M. Ortuño, the Delegate of Spain, the Officers of the Conference consider that there is no difficulty in making a Recommendation regarding the preparation and conclusion of a new Convention on Railways. We might express the proposed Recommendation in the following terms :—

It being understood that the Conference recommends that a new Conference shall be held within a period of two years in order to draw up a new Convention on Railways.

M. CARLIN (Switzerland; speaking in French). — I, too, appreciate the difficulty expressed by the Delegate of Spain. We must remember that we have before us a compromise proposed by the Officers of the Conference. This proposed compromise was amended by the Italian Delegation, and the French Delegate accepted this amendment, which was to the effect that a period should be fixed within which a new Conference should be summoned to prepare a Convention based upon the Recommendations which we are about to adopt. Before the vote is taken, however, I should like to draw the attention of the Conference to the fact that the stating of this period has no practical value; it is not for the Conference to say that a fresh Conference shall be held within a period of two years, for example, in order to transform into a Convention the Recommendations which will appear amongst the Acts of the present Conference. A new Conference can only be summoned by the Council, and we have no hold over the Council. We can of course make a recommendation, and if you think that is enough, you are free to do so, but I considered it was my duty to remind you that it is nothing more than a Recommendation, and that there does not ensue from it any obligation whatever to summon another Conference.

I should have preferred not to press the amendment which I submitted yesterday, and I am fully aware of the logical and legal objections which may be made to it, although in my view a convention can contain recommendations; it is possible, in fact, to agree to make certain recommendations, and there you have a "convention". However, I should not have insisted, but as the Delegate of Czecho-Slovakia has again taken up my amendment, I thought I ought to remind you of this. The proposal which the Officers of the Conference make to us takes into account the amendment of the Italian Delegation, but seems to me to be open to the very serious objection that it does not create any kind of obligation. We are indeed not competent to compel the summoning of a new Conference in order to make a new Convention. It was to this point that I considered I should more particularly draw the attention of the meeting.

The PRESIDENT (speaking in French). — In reply to the statement of the Swiss Delegate, may I be permitted to point out that a minority of twelve votes does not suffice for the making of a Convention, when sixteen votes have been cast against such a proceeding? M. Carlin's amendment is out of the question by the very fact that sixteen votes were cast against a Convention of any kind whatever; it is, therefore, impossible to return to the Carlin amendment.

In view of these circumstances, the duty and task of the Officers of the Conference is to endeavour to secure unanimous agreement on a formula in which, within the limits of possibility, our Governments and the League of Nations might be asked to arrange, by some means, for this Convention within a period which could be fixed at two years. I repeat that we have no means of forcing the signature of an international Convention, and that Governments will always be free not to sign. What we can do is to express our unanimous opinion in a Recommendation possessing all the authority of a Conference which has profoundly considered the questions submitted to it. Since the Convention has not been made, we will express a Recommendation that within a short period, and by the means which are technically and constitutionally at the disposal of the League of Nations, a new Conference be summoned to draw up and conclude a new Convention. This Recommendation will indeed be nothing more than a Recommendation, but it will nevertheless emanate from an assembly composed of the representatives of forty-two States who have assembled and who have deliberated. There can be no doubt that, as far as lies in its power, the League of Nations will put our view into practice.

This, I think, is quite clear. A broad sentiment of conciliation has inspired the advocates of the two causes. I therefore beg the assembly not, for reasons which in my opinion are mere quibbles, to prevent an agreement from being reached on the following formula which I venture to put before it :—

The Conference, bearing in mind the importance of the conclusion within a period of two years of a Convention on Railways,

Recommends that this Convention should be discussed and concluded within that period and that a Conference should meet for this purpose.

The Conference has adopted the following articles as Recommendations.

This proposal, which is one of conciliation, consists of two parts. The first refers to the summoning of a new Conference, the second refers to the adoption of the articles as Recommendations. I think that the Conference will see no objection to my putting the proposal as a whole to the vote.

The proposal was adopted by 29 votes to 2.

The PRESIDENT (speaking in French). — In accordance with this decision, the Officers of the Conference will put into the form of Recommendations the text which was submitted to you as a Convention (1).

The meeting adjourned at 7.55 p.m.

(1) The text inserted in the Final Act reads as follows :—

“4. The Conference, bearing in mind the importance of the conclusion within a period of two years of a Convention on Railways, recommends that a Conference should meet in good time to permit of the preparation and conclusion of such a Convention within the period indicated.”

TWENTY-SIXTH MEETING OF THE CONFERENCE

(Friday, April 15th, 1921, at 6.10 p.m.)

ADOPTION OF RECOMMENDATIONS — ADOPTION AS A WHOLE, BY ROLL-CALL, OF RECOMMENDATIONS RELATIVE TO INTERNATIONAL REGIME OF RAILWAYS — PROPOSALS OF ITALIAN AND CZECHO-SLOVAK DELEGATIONS

The meeting opened with M. Hanotaux, President, in the Chair.

ADOPTION OF RECOMMENDATIONS

The PRESIDENT (speaking in French). — Our agenda consists of the examination of the Draft Recommendations on Railways prepared by the Drafting Committee as a result of the vote which took place at the meeting held yesterday. I will read the text, on which the Conference will vote Section by Section.

The General Conference on Communications and Transit assembled at Barcelona under the auspices of the League of Nations, being desirous that the principle of Freedom of Communications should be applied in conformity with Article 23 *e*) of the Covenant of the League of Nations to the railways under the sovereignty and authority of the States which are represented at the Conference, or which eventually accept the present recommendations, and, recognising that in virtue of the above principle any one of these States is entitled on the railways under the sovereignty or authority of any other such State to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, unanimously recommends the adoption of the following provisions by the Governments of the said States.

The Conference recommends :

M. BIGNAMI (Italy; speaking in French). — These last words must be omitted: we have said earlier in the paragraph : *The Conference... unanimously recommends...* This is a repetition.

The PRESIDENT (speaking in French). — I think we must keep this repetition because it renders the text clear. The Conference unanimously recommends,—that is the first point. The next point is that it recommends, and finally comes the list of recommendations. I will read Section 1.

1. That the various States should adopt all possible measures which will facilitate the international transport of goods over the railways under their sovereignty or authority. These measures should, in particular, provide for :

Through transport, on the basis, as far as possible, of a single waybill, subject throughout to the same obligations;

Treatment of goods during the journey;

Transshipment when this operation cannot be avoided;

The form in which international tariffs are to be established and the conditions of their application.

If there are no observations on this Section, we may consider it as adopted.

2. That the various States should adopt all possible measures which will facilitate the international transport of passengers and baggage over the railways under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services

with through booking facilities, and, as far as possible, without change of carriage, as well as through booking of baggage subject as far as possible to the same obligations throughout.

Section 2 was adopted.

3. That the various States should take on the railways under their sovereignty or authority all possible measures, including those of a technical character, which will permit and facilitate the reciprocal utilisation and exchange of their rolling-stock. Those measures are excluded which would involve modifications in the essential characteristics of a railway system or of rolling stock.

M. CARLIN (Switzerland; speaking in French). — I think that the expression *par contre* is unsuitable. We do not wish to exclude from the recommendation what follows; we wish to make it clear—this is in accordance with an amendment submitted by the Spanish Delegation—that this is a desire and not an obligation. We might say *cependant*.

M. SIBILLE (France; speaking in French). — It would be better to put *toutefois* (1); it is the word which is generally used.

M. LANKAS (Czecho-Slovakia; speaking in French). — We should say, *These measures do not refer to* instead of *Those measures are excluded*.

The PRESIDENT (speaking in French). — I will put to the vote Section 3, the second sentence of which is altered as follows: *These measures do not include...* (*Toutefois, ne sont pas comprises parmi les mesures...*)

Section 3 was adopted.

We now pass to Section 4.

4. That, in the absence of existing conventions providing for the application of the principles laid down in paragraphs 1, 2 and 3 of these recommendations, special conventions should be concluded providing as far as possible for the application of these principles as between groups of contiguous territories.

M. LANKAS (Czecho-Slovakia; speaking in French). — We accepted the words *as far as possible*, which did not appear in our original proposal, in order to comply with a British amendment. The situation has now completely changed, the Draft Convention having become a series of Draft Recommendations, and it seems needless to weaken this Draft still further by the words *as far as possible*. We do not say here what the groups of contiguous territories are to be to which these principles will be applied. As the formula is sufficiently inclusive it would be reasonable to omit the words *as far as possible*.

Sir Hubert LLEWELLYN SMITH (Great Britain). — We second this proposal.

The PRESIDENT (speaking in French). — If there is no objection, this is decided. I put to the vote Section 4 with this alteration.

Section 4 was adopted.

5. That the various States should adopt all possible measures to ensure that the grant of facilities and the establishment of tariffs, as also their adoption and application as regards passengers who are nationals of any one of these States, or as regards goods having as their origin or destination any one of these States, do not depend, over one and the same throughout route in the same direction and in the same conditions either on the nationality of the passengers, on the ownership or commercial origin of the goods or on the flag or ownership of the vessels employed either before or after their transport by rail. Transport rates should be calculated in accordance with the tariffs legally in force and duly published, any private agreement having as its object the granting of rebates to one or several passengers or to one

(1) English text unchanged.

or several consignors or consignees should be expressly forbidden and considered null and void. Rebates are granted, however, provided they are duly published and are equally available to all under the same conditions.

The above recommendations do not form any hindrance to the existence and the establishment of different tariffs for internal import, export or transit traffic based on varying conditions or on commercial competition between routes. Nothing in these recommendations is to be taken as affecting in any way the question of combined rail and sea tariffs.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I should like to draw your attention to the words *over the same throughout route, in the same direction*. Those who were present at the discussions in the Committee on Railways will remember that the insertion or deletion of these words gave rise to a very strong difference of opinion when we were still discussing the basis of an obligatory Convention. At that time the British Delegation, supported by the French Delegation and several others, was of opinion that these words ought to be omitted; but there were others, in particular the Swedish Delegation, the Roumanian Delegation, and I think the Serb-Croat-Slovene Delegation, who felt that in an obligatory Convention it was unwise to omit the words. As the Railway Convention has now been transformed into Recommendations, I have taken steps to ascertain whether all the delegations who supported the insertion of these words would be willing to omit them. I have consulted the Czecho-Slovak, Italian, Roumanian, Serb-Croat-Slovene, and Swedish Delegations, and they are all now willing to omit these words. I think if we are to have only Recommendations they ought to be as strong as we can make them, and as it now appears that opinion unanimously favours the omission of the words, I propose that they be omitted.

M. ETIENNE (Director of the Central Office of International Transport; speaking in French). — Allow me to make a few more slight alterations and corrections.

Section 5 speaks of *goods having as their origin or destination any one of these States*; it would be better to use the words *coming from or proceeding to...*

At the end of the first paragraph of this Section, in order to retain the conditional, we should say *rebates may, or should, however, be granted* instead of *rebates are granted, however...*

The PRESIDENT (speaking in French). — The text will be altered accordingly.

M. CARACOSTEA (Roumania; speaking in French). — We have kept the words *in the same conditions*.

The PRESIDENT (speaking in French). — But we agree to omit the words *over one and the same throughout route, in the same direction*.

M. STIEVENARD (Belgium; speaking in French). — We must also omit the words *in the same conditions*, because they imply that in different conditions the inequality might depend on the particular nation concerned.

The PRESIDENT (speaking in French). — It has been asked to omit the words *in the same conditions*.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We only accepted this alteration in deference to the wishes of the British Delegation, but if it is again proposed to omit the words *in the same conditions*, we should like to return to the original text.

The PRESIDENT (speaking in French). — The Conference has decreed that the Convention be changed to Recommendations. Some delegations ask that the words *in the same conditions* be retained, whilst other delegations are of the contrary opinion.

M. STIEVENARD (Belgium; speaking in French). — I do not press for the omission of the words.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I had thought that this omission would not meet with opposition.

The PRESIDENT (speaking in French). — As the amendment to omit these words has not been pressed, we may accept the British proposal. For the sake of clearness I will read again the beginning of this Section.

That the various States should adopt all possible measures to ensure that the grant of facilities and the establishment of tariffs, as also their adoption and application as regards passengers who are nationals of any one of these States, or as regards goods coming from or proceeding to any one of these States do not depend in the same conditions either on the nationality of the passengers, on the ownership or commercial origin of the goods, or on the flag or ownership of the vessels employed either before or after their transport by rail..

M. LANKAS (Czecho-Slovakia; speaking in French). — The second paragraph would begin as follows :

The above recommendations do not form any hindrance to the existence and establishment of different tariffs...

The word *hindrance* was quite suitable for a Convention, but a Recommendation cannot form a hindrance to the existence or establishment of tariffs. The words *do not form any hindrance to* must therefore be replaced by the words *do not refer to*, or *do not affect*.

The PRESIDENT (speaking in French). — *Do not prevent*.

M. PIERRARD (Belgium; speaking in French). — But can the expression *contraire à l'établissement d'un tarif* (1) be used?

M. POLITIS (Greece; speaking in French). — We cannot say that a Convention is contrary to the establishment of a tariff.

The PRESIDENT (speaking in French). — Why can we not say so? It is French, and very good French too. I agree that a *Recommendation which affects* is somewhat doubtful French; the word belongs to the sphere of sentiment, and a Recommendation concerning a tariff does not contain much sentiment. I think we must use the word *contraire* (1), which is clearer.

If there are no further remarks on Section 5, I will put it to the vote as modified in the course of discussion.

Section 5 was adopted.

I will now read Section 6.

6. That, without prejudice to the provisions of Article 24 of the Covenant of the League of Nations, in cases in which existing conventions or the future conventions contemplated in paragraph 4 of these recommendations involve the creation of International Bureaux, the necessary instructions should be given for these Bureaux to exchange directly with the League of Nations any useful information relating to the exercise of their functions and to submit to the League an annual Report.

Are there any remarks on Section 6? I will put it to the vote.

Section 6 was adopted.

I will read Section 7.

That in exceptional cases deviations may be made from the preceding articles by measures of a general or particular character which a State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country; it being understood that the principle of freedom of communications must be observed to the utmost possible extent.

(1) English text unchanged.

M. LANKAS (Czecho-Slovakia; speaking in French). — Can we keep in its present form the words *recommends that in exceptional cases deviations may be made from the preceding articles by measures of a general or particular character...*? I think that the idea which we have in mind would be better expressed in the following form :— *recommends not to deviate save in exceptional cases from the principles and provisions of the preceding article...*

The PRESIDENT (speaking in French). — That is a totally different train of thought. I think that the form of the sentence should be changed, and that we should say *in exceptional cases deviations may be made...*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think that Section 7 should precede Section 6; the deviations to which it refers have no connection with the contents of Section 6.

The PRESIDENT (speaking in French). — You are right. The ideas do not belong to the same category.

M. CARLIN (Switzerland; speaking in French). — I should like to call the attention of the Conference to the following point. I think that if we do not omit this Section 7 we can hardly speak of *the provisions of the preceding articles...* We are dealing with mere recommendations, and I therefore think that—if we intend to keep the article at all, which appears to me superfluous—we should say *in exceptional cases deviations may be made from the Recommendations.*

The PRESIDENT (speaking in French). — But *to deviate* is no longer suitable. We have used the word *recommendations* everywhere. I think the most suitable text for what we wish to express would be *the measures of a particular character which are not referred to in the preceding Recommendations...*

M. PIERRARD (Belgium; speaking in French). — As this is only a question of text, what does the President think of the following wording, which would take the same form as in the other sections :

That in exceptional cases deviations may be made (Qu'il puisse être exceptionnellement...). We should use the subjunctive, and as this is a Recommendation, we should keep the same form as in the other paragraphs.

M. SCASSI (Greece; speaking in French). — We should say *the Conference considers that... may be made (La Conférence estime qu'il pourra être...).* We must change the sentence and not make it depend on *recommend*, but on another verb. This is not a question of a recommendation, but of an opinion.

The PRESIDENT (speaking in French). — I would suggest *The Conference recognises that in exceptional cases deviations may be made from the Recommendations in the preceding paragraphs.*

Sir Hubert LLEWELLYN SMITH (Great Britain). — *...from the preceding Recommendations...*

The PRESIDENT (speaking in French). — *...from the preceding Recommendations...* Yes, that is better.

M. AVRAMOVITCH (Czecho-Slovakia; speaking in French). — We originally accepted the text in the hope that it would one day become the text of the Convention. I think that this text should be kept; if we changed it we should find in the end that it would be impossible to adopt it.

The PRESIDENT (speaking in French). — Your remark will be entered in the records.

M. REINHARDT (Austria; speaking in French). — I think that the word *recommendations* does not express what we mean. What we are discussing here is the provisions of these recommendations. The recommendation is what we make.

The PRESIDENT (speaking in French). — You suggest then that we should return to the word *paragraphs* instead of the word *recommendations*. I think indeed that our intention would be better expressed by the term *paragraphs*.

I will read the text of Section 7 in the form in which it emerges from the discussion which has taken place :

The Conference recognises that in exceptional cases deviations may be made from the preceding paragraphs by measures of a general or particular character which a State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country; it being understood that the principle of freedom of communications must be observed to the utmost possible extent.

M. STIEVENARD (Belgium; speaking in French). — Can we speak of *deviating from paragraphs*?

The PRESIDENT (speaking in French). — We call the divisions in this text *paragraphs* instead of *articles*. Obviously we must say... *the provisions which are in the paragraphs*... but really I think that would be splitting hairs. However, if you prefer the word *articles*, let us use the word *articles*, but the term *articles* is used principally in laws. We preferred a less definite word which I think fully answers the purpose.

I put to the vote the text of Section 7 in the form in which I have read it.

Section 7 was adopted.

ADOPTION AS A WHOLE, BY ROLL-CALL, OF RECOMMENDATIONS RELATIVE TO INTERNATIONAL REGIME OF RAILWAYS

I will put to the vote as a whole the Recommendations relative to the International Regime of Railways.

Albania	Yes	India	Yes
Austria	Yes	Italy	Yes
Belgium	Yes	Japan	Yes
Bolivia	Yes	Latvia	Yes
Brazil	Yes	Lithuania	Yes
British Empire	Yes	Luxemburg	Absent
Bulgaria	Yes	Netherlands	Yes
Chile	Yes	Norway	Yes
China	Yes	Panama	Yes
Colombia	Absent	Paraguay	Yes
Cuba	Yes	Persia	Yes
Czecho-Slovakia	Absent	Poland	Yes
Denmark	Yes	Portugal	Absent
Esthonia	Yes	Roumania	Yes
Finland	Yes	Serb-Croat-Slovene State	Yes
France	Yes	Spain	Yes
Greece	Yes	Sweden	Yes
Guatemala	Yes	Switzerland	Abstention
Haiti	Yes	Uruguay	Yes
Honduras	Yes	Venezuela	Absent

The Recommendations were adopted by 34 votes, with one abstention.

PROPOSALS OF ITALIAN AND CZECHO-SLOVAK DELEGATIONS

M. SINIGALIA (Italy; speaking in French). — The Italian Delegation does not in any way desire to return to the discussion of the Recommendations which have been adopted, but it would remind the Conference that it submitted to the Committee a request to add an article, the object of which would be the possible concession of electrical power (1).

This proposal was not accepted by the Committee for two reasons; the first was that it was thought that it did not enter into the scope of these Recommendations, and the second was of a strategical nature. As the text has now been accepted, the Italian Delegation ventures to ask whether it would not be possible, as has already been done in connection with other questions, to include this proposal in the Final Act of our deliberations in the form of a Recommendation. This passage could state that the proposal in question was not adopted in the form submitted by my delegation, because it was considered that it did not come within the scope of the Recommendations which were under discussion, but that the Conference was of opinion, in the interest of international routes of communication, that it would be desirable for the question to be considered and a solution to be found in the future. The text of this recommendation might read as follows :—

The Conference considered that the Italian proposal relating to the possible concession of electrical power for the operation of railways was outside the scope of the Recommendations relative to Railways. It considers, however, that it should bring this question to the notice of the Council of the League in the belief that it would be desirable for it to be considered in the future, in connection with the improvement of routes of communication of international concern.

The PRESIDENT (speaking in French). — You have heard the Recommendation made by the Italian Delegation. I think that the text of this proposal might be drawn up as follows :—

The Conference decided that the Italian proposal concerning the possible concession of electrical power for the operation of railways exceeded the scope of the Recommendations relative to Railways. It considers, however, that it should bring this question to the notice of the Council of the League, in the belief that it would be desirable for it to be considered in the future with a view to the improvement of routes of communication of international concern.

M. ORTUÑO (Spain; speaking in French). — It is in fact a recommendation that this question should be examined.

The PRESIDENT (speaking in French). — It is a guide for the future.

M. POLITIS (Greece; speaking in French). — It would perhaps be well to state to whom and by whom such a concession would be made.

The PRESIDENT (speaking in French). — For the sake of added clearness, and in order to take into account M. Politis's remark, we might perhaps word the sentence thus ...*with regard to the possible concession of electrical power between contiguous States...*

M. SINIGALIA (Italy; speaking in French). — In order not to adopt too restrictive a formula we might simply say *between States*.

The PRESIDENT (speaking in French). — There is no objection to the text of the Italian proposal, which reads as follows :—

The Conference decided that the Italian proposal with regard to the possible concession of electrical power between States for the operation of railways...

(1) See p. 47.

It is decided then that this Recommendation will be included in the Final Act, the definitive text of which will be drawn up subsequently (1).

M. LANKAS (Czecho-Slovakia; speaking in French). — In the course of the general discussion I spoke of the desirability of a certain degree of unification from the point of view of local tariffs (2).

I brought up this question at Paris, and my view was adopted there, the following words being inserted in the former Article 1 :— *Measures to facilitate international traffic shall deal with the form of the establishment of tariffs.* Although the Italian Delegate shared my view, it was considered in Committee, when Article 1 was discussed, that it would be more logical to speak only of international tariffs in the Convention. I think, however, that all the railway experts will agree with me that it would be well to facilitate as far as possible the establishment of direct tariffs. One of the best means of arriving at this result, particularly in the case of contiguous territories, is to make the actual form of local tariffs as uniform as possible. This does not in any way affect the sovereignty of States or tariff policy; it is simply a recommendation that neighbouring countries should attempt to make the form of their local tariffs as uniform as possible in order to facilitate the establishment of direct tariffs. This recommendation might be dealt with in the same way as the Italian proposal. The text which we propose reads as follows :—

In view of the advantages afforded to the development of international commerce and traffic by the adoption of international common tariffs, and taking into account the fact that the great diversity in the form of internal tariffs offers one of the main obstacles to the easy and rapid establishment of international tariffs, the General Communications and Transit Conference considers it highly desirable that, particularly as concerns groups of contiguous territories, the form of internal tariffs should as far as possible be simplified and unified and that this question should be examined.

The PRESIDENT (speaking in French). — Subject to final drafting, is there any objection to the inclusion of this Recommendation, like the preceding one, in the Final Act?

This was decided (3).

The meeting adjourned at 8.55 p.m.

(1) The text inserted in the Final Act reads as follows :—

“The Conference, bearing in mind that it is desirable with a view to the improvement of ways of communication of international concern that States having an abundant supply of electrical power should concede a part of it to States in want thereof, recommends that this question should be examined”.

(2) See p. 21.

(3) The text inserted in the Final Act reads as follows :—

“The Conference declares that it is highly desirable that the question of the extent to which it is possible to simplify internal railway tariffs and to bring them into greater uniformity should be studied, particularly as regards groups of contiguous territories”.

PART IV

DISCUSSION AND ADOPTION

OF THE

RECOMMENDATIONS

RELATIVE TO

PORTS PLACED UNDER AN INTERNATIONAL REGIME

EIGHTEENTH MEETING OF THE CONFERENCE

(Friday April 8th, 1921, at 11 a.m.)

STATEMENT ON RESOLUTION RELATING TO INTERNATIONAL REGIME OF PORTS — GENERAL DISCUSSION

The meeting opened with M. Hanotaux, President, in the Chair (1).

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STATEMENT ON RESOLUTION RELATING TO INTERNATIONAL REGIME OF PORTS

The PRESIDENT (speaking in French). — I call upon M. Adatci, one of our Vice-Presidents, to make a short statement on the Resolution relative to the International Regime of Ports.

M. ADATCI (Vice-President; speaking in French). — Mr. President, Gentlemen, in accordance with Article 23 e) of the Covenant of the League of Nations, provision is made in Article 379 of the Treaty of Versailles for a General Convention concerning the International Regime of Ports, to be concluded, with the approval of the League of Nations, within a period of five years dating from the coming into force of the Treaty of Peace. The Executive Council of the League of Nations accordingly proceeded to deal with this question immediately upon entering its duties; at its meeting held on February 13th, 1920, it decided to call upon the Commission of Enquiry on Freedom of Communications and Transit to prepare a draft convention, to be submitted to you for careful consideration, on ports placed under an international regime. As you are aware, this Commission did not consider it possible at that time to contemplate the concluding of a convention of this kind; it confined itself to preparing a draft resolution which should include a kind of standard type of statute for ports placed under an international regime. It is this draft which is submitted to you for consideration.

Ports have at all times and in all places constituted vital parts of the countries possessing them. There have even been many ports which in themselves constituted empires or republics, — for example, Tyre in ancient Phœnicia, Carthage, Venice; and besides these particularly striking instances, it may be said without exaggeration that for most countries ports are the organs essential to their existence, which enable them to establish contact with foreign countries. Thus when in 1857 Commodore Perry, of North America, came at the head of a powerful fleet and asked the Shogunal Government of Japan to open certain Japanese ports to foreign commerce, the Japanese nation at once instinctively realised that this was equivalent to opening the whole country to international intercourse, and after long hesitation decided to enter unreservedly into the path of international co-operation by opening five of the principal ports of its empire.

The Commission of Enquiry which drafted the text of the Resolution now before you in no way intended to propose that such and such a port should be placed under an international regime. This point is left to the free decision of sovereign States either by means of treaties concluded between them or whenever, desirous of establishing in their ports a regime of freedom and complete international co-operation,

(1) The first part of the meeting was devoted to a discussion on the Rules of Procedure.

they might think fit to do so by means of unilateral acts. To place the ports of any country under an international regime is of the greatest importance to that country; there must be weighty reasons for such an act, and, moreover, rights and interests of the most varied kinds must be harmonised, whilst the fundamental purpose which the whole of mankind hopes to achieve from the creation of such ports must be fulfilled. The authors of the *Green Book* have fully considered all these requirements and are firmly convinced that they have dealt successfully with this important question. The Conference will itself perceive the justice of my appreciation when it examines the text and the report on this subject. In the Treaty of Sèvres itself the provisions drawn up by the authors of the *Green Book* were adopted in Article 335 and the following articles, in respect of Constantinople, Haidar Pasha, Smyrna and Alexandretta, Caïpha, Bassorah, Trebizond and Batum, their practical usefulness being thus proved. I think there is no need for me to recall the principles upon which the proposed "standard statute" for ports is based. The text of the accompanying Draft is sufficiently explicit. I merely wish to dwell upon certain important points.

The Draft Resolution speaks of *the authority under which the port is situated*. This expression *authority*, which was very carefully chosen by us at Paris after long discussion, applies to all cases—suzerainty, protectorates, mandates—in which the State responsible for the application of the Convention does not exercise any sovereignty over the territory. It would appear impossible to fix in advance in every case which of the signatory States will be responsible for this application. These are important technical and legal questions, and, if difficulties arise, they are to be solved separately in each individual case. The State responsible for any measure is that which actually possesses the means of both taking the measure and of preventing it, and where sovereignty and authority are divided between different States, as, for example, in the case of leased concessions which entail such a division, it would be for these States to arrive at an understanding with a view to applying the present Convention. But whatever the solution adopted, the special acts referred to in the Preamble require in particular the consent of the State under whose sovereignty or authority the port is situated, because the system of sovereignty and authority presents difficulties—sometimes very considerable ones,—in various parts of the world. The words *in particular* mean that it is not intended that this consent shall be sufficient in all cases. Similarly it may be pointed out that though the Commission unanimously considered it desirable that the flags of vessels of any State having no sea-coast should be recognised in the ports referred to in the Resolution, when such vessels are registered at some one specified place, it did not consider it desirable to insert a special text in the Resolution. A special text has been proposed for this purpose to settle the question in an entirely general manner (1).

When considering the question of ports, the Commission was faced with the great problem of maritime coasting-trade. It was neither able nor willing to consider this problem as a whole; it went no further than to lay down provisions which should apply to ports placed under an international regime and to express the Recommendation which I will again affirm here, to the effect that the definition of the regime of national maritime coasting-trade should be considered as soon as possible, with the co-operation of the necessary maritime authorities. I should be most happy if the Conference could devote a little of its valuable time to giving at least a general consideration to this question, which is of such great importance to every country. I think that the Conference would do well to consider the Draft Resolution now, and that the experts from all parts of the world who are solemnly assembled here today will render signal service to all the States which are to regulate jointly international questions relating to ports, by furnishing them, as we propose, with a model statute which will thus have been subjected to a thorough discussion.

(1) See *Verbatim Records and Texts relating to the Convention on the Regime of Navigable Waterways of International Concern and the Declaration recognising the Right to a Flag of States having no Sea-coast*, Part 4.

GENERAL DISCUSSION

The PRESIDENT (speaking in French). — The question of the international regime of ports is now open for general discussion.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — As a result of the geographical position of Portugal and her colonies, several of her ports are very generally used for international commerce, and our Government has taken measures with a view to developing this use of our ports to the greatest possible extent. Even when, as at Lorenzo Marques, we do not secure any appreciable financial results from it, we still gain through the consolidation of our commercial and economic relations with our neighbours.

Though our railway system is not very extensive and our navigable waterways are not numerous, we have in our territory a large number of ports, some of which are the best in that part of the world; these ports have ever been freely open to the navigation of all peoples without any distinction of nationality.

In our colonies of Angola and Mozambique and in India, the first railways which we built—often at the cost of great sacrifice—were intended to be used for purposes of transit. We gave them preference over the most vital interest connected with the development of our agriculture and industry. Thus in Angola we began to construct the railway to Katanga, though, as the result of difficulties which we are only too desirous of removing, this railway has not yet been completed. In Mozambique the lines from Lorenzo Marques to the Transvaal and from Beira to Rhodesia have been built, and the line to connect Beira with British Central Africa is in course of construction. In India we have built the line from Marmagao to the frontier. Our principal rivers in Mozambique have been internationalised, and the Zaire is subject to the regime of the Congo Basin. I could quote further examples to show that, as regards international transit, our regime is based upon the most liberal principles of equality. I hope therefore that the Conference will see in the remarks I am about to make nothing more than a desire to obtain information concerning the regime proposed in the *Green Book*, which I confess awakens some uneasiness in the minds of the Portuguese Delegation. Small countries, or, as they are called, countries with limited interests, must be fully cognisant of what they are undertaking before they sign engagements.

As I have already informed the Conference, Portugal cannot renounce the right of decreasing her export duties on goods loaded in her ports and destined for other national ports, whether they are conveyed on national or foreign vessels. We make this distinction only in the case of goods of Portuguese origin transported between Portuguese ports, and its main object is to encourage the despatch to the mother-country of raw materials produced in her colonies on the west coast of Africa.

During the war, Portugal, like most of the Allied countries, adopted the system of prohibiting exports abroad, but this system, though possible in time of war, cannot be maintained in time of peace, when the economic situation has again become normal; we have therefore abandoned it.

Article 8 of the Resolution lays down that all customs duties must be uniform, whatever may be the flag of the vessel effecting the export, and no distinction shall be made when the transport is effected between ports of one and the same country.

All countries naturally desire to improve their ports, but they cannot be expected to carry out extensive works in all the ports situated in their waters. It is indeed a generally recognised rule that all available resources should be concentrated in order to improve a limited number of ports to the utmost possible extent. Article 3 states that it shall be the duty of the State under whose sovereignty the port is situated to take *suitable measures to remove any obstacle or danger to navigation*... It may happen that a country has several ports in close proximity, as in the north of Mozambique. In such a case the State cannot be called upon to carry out works for lighting, dredging, and so on, in all its ports, but only in those in which it considers that there is the greatest advantage in so doing. Moreover, the word *suitable* is vague and indefinite.

A wealthy State may carry out very extensive works, whereas a poor State has not the same means of doing so.

If a State undertakes works in one of its ports, who can judge whether these works are of such a kind as to prejudice the free use of the port or of the approaches thereto, as is enacted in Article 4?

It should be pointed out here that, whereas in the Draft Convention on Navigable Waterways we asked that a State should have the right to carry out works on the territory of another State, in the Draft Resolution on Ports countries are forbidden to carry out works in any of their own ports, if another country considers that such works may endanger the approaches of the port. Before carrying out what it considers to be beneficial, a State employs experts to investigate the regime, requirements and characteristics of its port, in order to carry what it considers desirable. Is it to submit its plans to experts of the League of Nations or its technical committees? I do not think that would be practicable or in consonance with the principle of the sovereignty of a State, which is so carefully safeguarded in the Covenant. If a State proposes to improve a port, and obtains the means of so doing, I see no reason affecting the general interest to prevent its carrying out the works which it desires. All over the world there are rival ports which are seeking to attract the traffic of the hinterland which they serve, and it would be most dangerous to allow a principle to exist by which one port might prevent another from improving its transit facilities.

As regards free zones in ports, it would be desirable for the State under whose sovereignty or authority the port is situated to have the right to reserve the free zone exclusively for certain products, while at the same time treating all the nationals and products of all other nations on the same footing. Cases may arise in which the small extent of the free zone may require these restrictions.

These are the reasons which have led the Portuguese Delegation to submit amendments to the Draft Resolution. In these amendments it asked for certain articles to be drawn up in such a way that there can be no doubt as to the method of their application. We also ask for the rights guaranteed by the Covenant to be maintained. Finally, we wish to state to the Conference that the sole desire of Portugal, which possesses ports in the Atlantic, on the Mozambique Canal, in the Indian and Pacific Oceans, is to improve her ports as far as her resources allow, and that, far from raising the shadow of a difficulty in the way of international traffic through her ports, she desires this traffic to increase more and more.

M. AMUNATEGUI (Chile; speaking in French). — The question of ports is one of the most interesting and also one of the most difficult of those before the Conference. As we have already had occasion to state to this assembly, Chile has always from the very beginning of her independent existence been distinguished for her policy of freedom. Her ports have been open to the commerce of the whole world, with equality of rights, both for her own citizens and for those of other countries. The Government is at present occupied on improvements in order to provide still more facilities; it is also engaged in developing the national mercantile marine while reserving coasting-trade exclusively for its own flag.

The Conference has realised to the full the importance of this matter in the Draft now before us, and also all the difficulties which arose before a general agreement could be attained. However, we think that the work now begun must be continued, and further meetings must be arranged in order to achieve the great aims which the League of Nations is pursuing for the welfare of humanity. For the moment we are only considering ports placed under the authority of the League of Nations and those under an international regime. We could certainly not prepare a convention on this subject, and in the opinion of the Chilean Delegation we could not adopt resolutions either. In view of the present state of our investigations, we think that the only possible course is to submit declarations and recommendations specially to the League of Nations and to the countries under whose sovereignty and authority ports subject to an international regime are situated; such declarations and recommendations could serve as a basis or definitive agreements.

We also consider it necessary to establish clearly the difference between ports to

which these proposals apply and national ports which every State opens to international commerce.

Finally, we consider it desirable that this Conference should make a declaration of principle concerning the freedom and equality to be enjoyed by all flags in the ports of the whole world, and that it should proclaim its desire to see work begun for a new Conference on ports. These are the main lines of the proposal which we have the honour to submit to the favourable consideration of the Conference.

M. WINIARSKI (Poland; speaking in French). — Before proposing a motion on the subject of these draft regulations, I should like to recall briefly what took place at the Commission of Enquiry when it discussed this question. At the outset of the discussion almost all of us considered that it was not a suitable time to examine the question. We did not know to which ports the standard statute which it was proposed to prepare might apply. We had even proposed not to discuss the question at all, and the majority of the Commission of Enquiry favoured this proposal. We then yielded to the entreaties of General Mance, who succeeded in winning the confidence of us all, and we decided to continue the discussion, as it were on a theoretical basis. I at once asked whether any port existed to which such a regime had already been applied. The answer was in the negative. I then wished to know to what port it was considered that the statute should apply in the future. Certain ports were mentioned—I will not be indiscreet—ports in the Baltic, Mediterranean, Adriatic and Ægean Seas. But the announcement of these names was followed by vigorous protests from the States concerned; several States even declared that they would never admit that the regime laid down in the draft should be applied to any of their ports whatever. Constantinople was then mentioned, as the Ottoman Empire, having no representative at the Commission of Enquiry, was not in a position to protest.

M. Adatci says that some use of this Draft was made in the Treaty of Sèvres. I think that at the present time it is indiscreet if not unwise to mention the Treaty of Sèvres. We are to-day faced, as we were a year ago at the Commission of Enquiry, with a purely theoretical question. Are we obliged to deal with it? I note that the Covenant of the League of Nations is silent on this point; it speaks of freedom of transit, of communications, of equitable treatment of commerce, but it does not speak of ports. Are we bound by the Treaty of Peace? Not at all. The article cited by M. Adatci speaks of : *Any General Conventions regarding the international regime of transit, waterways, ports or railways which may be concluded by the Allied and Associated Powers...* That then is optional, but a considerable task still lies before us, and time is pressing. We had hoped that on Sunday next the Conference would have completed its labours, but we all agree now that we must abandon that hope. This is an additional reason for not hastening the discussion of this question. The Polish Delegate therefore proposes to postpone the consideration of it until a suitable occasion arises.

The PRESIDENT (speaking in French). — M. Winiarski's speech is not a mere statement, but a motion on the agenda.

M. MATSUDA (Japan; speaking in French). — At the present time, when the task of our Conference is well advanced, and the close of our work is already in sight, we will not detain you long with statements upon questions concerning international ports. But the Japanese Delegation, which is strongly in favour of freedom of communications, would like, now that the discussion on the international regime of ports is about to begin, to state the views of the Japanese Government on matters relating to the carrying on of maritime coasting-trade. As you are aware, this question is usually dealt with in commercial and navigation treaties, and also in national legislation.

The Japanese Delegation would like to express to the meeting the readiness of the Japanese Government to allow foreign vessels the right to carry on coasting-trade, of course subject to reciprocity. The Japanese Government is quite convinced that there exists in the different countries different laws which might be said to justify the maintenance of their regime in respect of this question, each in its own domain, from the point of view of foreign or domestic policy. But on the other hand we cannot forget that we are faced with a new fact,—the Covenant of the League of Nations. According

to the spirit of the Covenant, it is quite certain that the carrying into practice of the principle of freedom of communications is an essential element for the maintenance of the peace of the world; indeed it is, I am sure, one of the principal reasons, and, if I may say so, the sole object of this Conference. If it did not attain this object, the efforts of the Barcelona Conference would not be crowned with real success. In these circumstances we venture to describe in somewhat greater detail—though very succinctly—the ideas which guide us in this matter.

Vessels, by their very nature, possess an international character. Thanks to the boundless oceans which surround us, they go to all parts of the world, they come from all parts of the world. In these international communications the reservation of maritime coasting-trade would gravely prejudice the principle of freedom of communications. Unfortunately, to our deep regret, this question was not settled by the Commission of Enquiry, which prepared these drafts. Indeed in this Commission an opposite theory was advanced; certain of its members considered that a reservation of this kind in no way restricted freedom of international communications. We greatly regret to find a difference of opinion, in face of the principle so clearly enunciated in a spirit of freedom by the Covenant of the League of Nations. In any case we proposed that this question should be discussed in sub-committee and that it should receive full and minute consideration.

We will confine ourselves to pointing out here that article 7 should be omitted, because in our view this article admits that contracting States could not grant other States the right to carry on maritime coasting-trade, and this would be to admit the opposite principle to that of freedom of communications.

However, we do not insist upon this principle, highly desirable as it may be, realising as we do the difficulties which certain Governments would encounter from another quarter. I think that no State will see any serious objection to undertaking to allow foreign flags the right of coasting-trade if there is reciprocity. In fact the majority of States already grant it on terms of reciprocity. We therefore consider that the views which we have expressed would bring all countries to agreement, because these views are formulated with the object of reconciling the principle of freedom with present conditions in the various countries. The problem is to discover what is the best formula for the realisation of these ideals, and we think that this should be the subject of consideration by the sub-committee which is to be formed. I may add that in our view the best form will be that of a general convention composed of a single article, similar to that relating to the flags of landlocked States.

M. van EYSINGA (Netherlands; speaking in French). — The Commission of Enquiry on Freedom of Communications and Transit, while recognising that a convention on ports would undoubtedly be desirable in order to allow full scope to the principle of freedom of communications, thought it necessary to postpone consideration of it and only to transmit to the General Conference a draft standard statute for certain ports, which might be adopted by the Conference in the form of a resolution. The main idea of the Resolution is expressed in Article 1: The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. They shall be treated on a footing of absolute equality, and in particular no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is placed. This idea has for long been applied in the Netherlands. That country, in which lived Hugo de Grote, one of the founders of international law, carried on a century-long struggle for freedom, and did not keep this freedom solely for its own citizens; as a nation of navigators, it is of great concern to us that the ports of all nations should equally be free.

Our coast has no natural ports, and lends itself but little to the construction of ports; the shore slopes gradually downwards, great quantities of sand are often driven by gales into the outer ports, and this sand has to be removed by perpetual dredging. In spite of this, there are six large ports, among them two of capital importance, although the coast between Belgium and Germany is only 400 kilometres in length. The two latter are Hook of Holland with Rotterdam, with a traffic of 78 million tons and a movement of more than 22,000 vessels in 1913, and Ymuiden with Amsterdam with a traffic in the same year of 27 million tons and about 15,000 sea-going vessels and also 6,500,000

tons and 32,000 fishing-vessels. The four ports of lesser importance are Flushing, Helder, Haarlem and Delfzijl. Except Helder, the importance of which has greatly diminished since the construction of the North Sea Canal to which Ymuiden gives access, these latter ports are important enough to merit improvement to enable them to meet the needs of traffic. The entrance of the port of Haarlem was improved some years ago, and at the present time improvements on a large scale are being carried out at Hook of Holland, Ymuiden, Flushing and Delfzijl. Allow me briefly to explain these schemes of improvement in order that you may realise that the freedom of navigation which we offer is not without value for the shipping of the world. The port of Hook of Holland, which connects the Nieuwe Waterweg to Rotterdam, and which forms the principal entry to the Rhine, is now 10.50 metres deep at normal high water. A scheme, upon which work has recently been begun, comprises first of all an increase of the depth to 12.50 metres at the mouth and 11.50 metres over the rest of its course, and even later to 13.50 and 12.50 metres respectively. Thus, vessels drawing 12.50 metres—the largest which can pass through the locks of the Panama Canal—may enter the basins of Rotterdam. The port of Ymuiden gives access to the canal connecting Amsterdam with the North Sea. This canal is separated from the sea by several locks, and a new lock is in course of construction of very extensive dimensions, the length being 400 metres, width 50 metres and depth 14.50. For your information I may add that the Olympic, of the White Star Line, is 270 metres long and 28 metres wide, draws 10.50 and has a tonnage of 45,000. Vessels of 100,000 tons, which would be much greater than the leviathans of today, could thus pass through this lock. The canal and port of Ymuiden will thus be increased, and a new mole will be built extending 2,200 metres into the sea. In a few years Amsterdam will have the widest and deepest canal in the world. The cost is estimated at some ten million florins. The improvement of the port of Flushing, which is of great importance from the point of view of communications between the Netherlands and England, consists chiefly of the construction of a new open basin 20 hectares in area and 8 metres deep at normal low water. The works at the port of Delfzijl are already at an advanced stage; the area of the basins will be increased by about 20 hectares, 10 hectares of which will be deep enough for vessels of 10,000 tons with a draught of 7.50. The importance of Delfzijl arises from its timber traffic with the countries of northern Europe.

I have tried to make my statement very brief, but I was particularly anxious to bring to your notice the very extensive works undertaken by the Netherlands. Moreover, although the financial situation of our country is not at all favourable, the Government did not wish to suspend the carrying out of these improvements. After the troubled period through which we are all passing, we are looking forward to a more encouraging future, and to a revival of commerce greater than has ever before been attained. This development will be the more speedy if the difficulties which hinder transport traffic are lessened; the Resolution proposed to us contains the principles which must be taken as a basis for the attainment of this end. In conclusion, the Netherlands Delegation expresses the hope that the equality of treatment applied in the ports of the Netherlands will also be applied to the utmost possible extent in all the ports of the world, to the very great benefit of international intercourse.

The PRESIDENT (speaking in French). — The discussion on ports is closed. We have before us a programme proposed by the Polish Delegation, asking that this question should be postponed until the right moment for dealing with it. The Conference may therefore vote at once on the Polish proposal, which would of course obviate any further discussion, or it may refer the text of the Polish amendment to a committee, the Waterways Committee, for example, which would discuss the question and present us with a report. Moreover the programme of the Conference is a very full one; I wish to make this observation in the general interest of the Conference and of the work which lies before us.

M. ADATCI (Vice-President; speaking in French). — I see the force of the view taken by M. Winiarski, the Polish Delegate, and I think there is good foundation for it; but in view of the request of the Council of the League of Nations that we should consider this Draft, and as it has already been very carefully studied, I propose that

this question—a comparatively simple one—should be referred to a Committee, which will arrive at a decision. I would have shared M. Winiarski's view, but I remembered that the Council of the League of Nations had entrusted us with the task of considering the standard statute for ports. We must consider this matter thoroughly for an hour or two, and after discussion we will see whether the proposal should be adopted or not.

M. NEUJEAN (Belgium; speaking in French). — I fully support M. Adatci. It seems to me that the Conference cannot possibly shelve the question without having either discussed or examined it; it is essential that it should be referred to a Committee, which will consider the Polish proposal and will also take due heed of the opinions of the Japanese, Netherlands and Portuguese Delegates.

The PRESIDENT (speaking in French). — Any request to refer a question to a Committee must of right be complied with; but we must know whether it will be referred to the Waterways Committee or to a special committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I support M. Adatci's proposal; in deference to the Council of the League of Nations, which placed this Draft Scheme Regulation on our agenda, we ought to refer it to a committee, which will decide whether it should then be sent back to the Plenary Conference.

The PRESIDENT (speaking in French). — Has the Polish Delegate any objection to the proposal to refer the question to a Committee?

M. WINIARSKI (Poland; speaking in French). — No, since this reference is a matter of right. But I should like to point out to M. Avramovitch that my proposal implies no lack of deference towards the Council of the League of Nations.

The PRESIDENT (speaking in French). — There can be no question of that; all views may be freely expressed here.

The question now arises as to what procedure will be employed for the Polish proposal, the effect of which would be to leave the question of ports entirely aside. M. Adatci asks for the proposal to be referred to a Committee. I think we cannot but accede to this request, as the Polish Delegate himself agrees to it.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Will the question then be returned to us in plenary meeting?

The PRESIDENT (speaking in French). — Certainly, in the Report of the Committee to which it is referred.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I propose to refer both the Draft Resolution and the Polish proposal to a Committee, either the Waterways Committee or any other. In any case the question would come before us again.

The PRESIDENT (speaking in French). — We should do well to accept M. Medina's proposal. There now remains the question of the Committee to which the matter will be referred,—will it be the Waterways Committee or a special one?

I will put to the vote the question referring the matter to the Committee on Navigable Waterways. If this proposal is lost, it will mean that the Conference wishes to refer the question to another Committee. I put to the vote the question of referring the Draft concerning Ports and the Polish amendment to the Committee on Navigable Waterways.

The proposal was adopted by 30 votes to 2.

The meeting adjourned at 1.30 p.m.

TENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Friday, April 8th, 1921, at 4 p.m.)

DISCUSSION OF PRESENT DESIRABILITY OF CONSIDERING RESOLUTIONS RELATIVE TO PORTS

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair (1).

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DISCUSSION OF PRESENT DESIRABILITY OF CONSIDERING RESOLUTIONS RELATIVE TO PORTS

The CHAIRMAN (speaking in French). — At the plenary meeting this morning our Committee was entrusted with the task of considering the question of ports. A preliminary question has been put in by M. Winiarski.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation proposes to postpone the consideration of the text relating to ports until the time is really opportune for such consideration. We consider that this resolution on ports is not so essential that the Conference, whose Agenda is already very loaded and its time limited, should be obliged to deal with it now. Moreover in the Covenant of the League of Nations, as in the Treaty of Peace, there is no obligation for the League of Nations. Of course the Council of the League has referred the question to us, but we may respectfully point out that it is not yet ripe. I may add that in order not to lay ourselves open to any suspicion it would also be well for us not to deal with it now. I therefore propose to refer this question to a subsequent Conference when the proper time has come to consider it.

The CHAIRMAN (speaking in French). — I did not understand one of your remarks. You spoke of "suspicion."

M. WINIARSKI (Poland; speaking in French). — I will explain myself, in order to avoid any misunderstanding. We are here divided into two camps on questions of transit, navigable waterways and railways, and I think it is unnecessary, to say the least, to widen this division.

M. DUCHÊNE (France; speaking in French). — I cannot but support the proposal of the Polish Delegate. We think, as he does, that it would be premature to deal with this exceedingly difficult question now. If we wished to discuss it too early, we should incur the risk of adopting useless formulas or of leaving numerous gaps. This is in fact what has happened to the Draft Resolution now before us. In French law, and perhaps

(1) The beginning of this meeting was devoted to the discussion of the Draft Convention on the Regime of Navigable Waterways of International Concern. (See *Verbatim Records and Texts on the Regime of the Convention on Navigable Waterways of International Concern*, p. 212.)

in others also, there is a saying: *donner et retenir ne vaut*. In the present case we are obliged both to give and to withhold. We should impose certain rules and immediately afterwards we should be obliged to restrict their scope. The Preamble speaks of an international regime, and immediately adds that a special act will be necessary to establish this regime. In Articles 1 and 2 certain rules are laid down, and immediately afterwards their scope is restricted. The Draft refers to *reasonable* provisions, but leaves it to each State to ascertain wherein lies the reason. Further on we find, in Articles 5, 6 and 10, regulations which appear quite clear, but the scope of which is at once restricted by the formula *subject to special provisions...* In Article 8 a principle is enunciated, but is at once corrected by the providing of exceptions. It could not be otherwise at the time when the Draft was prepared, and I think that at present these dangers are unavoidable; on the contrary, they would become all the more evident, together with all the complications to which we should be exposed.

What would happen if we went further? This, I think. We should expend much goodwill in drawing up a text, somewhat on the lines of those now before us in the Draft, in which we should affirm everything, while at the same time restricting the scope of what we have affirmed. The text would probably be unworthy of a Conference such as ours, which aimed at attacking all questions seriously. None of us wishes our labours to result in a text which should not be completely satisfactory. Moreover, would this text be a Convention? No. According to the commentary it would be a "recommendation" or even a "resolution". Here would be another difficulty. Is a resolution the same as a recommendation? I do not think so; a resolution is more than a recommendation.

I see only one solution which would be calculated to reconcile all views; it is that proposed by the Polish Delegation, and consists in leaving the Council of the League of Nations to decide the time when it should entrust a special Conference with the task of considering the question thoroughly, and drafting a text worthy of a meeting of the representatives of all the members of the League of Nations.

Mr. H. O. MANCE (Great Britain). — I think we must all have been impressed by the argument that our Agenda is very full; it is an argument which we shall be forced to take into very serious consideration in the course of a few days. But before dealing with that aspect of the question I should like to refer to a few observations which various delegates have made.

First of all the Delegate of Poland stated that the time was not ripe for dealing with ports. I think that point has already been cleared up at the plenary meeting this morning; but as there is one fact which has been borne in upon me personally, on account of the special position in which I found myself, and which I should like to communicate to the Committee; these provisions are already in force at the present time. I well remember that the text of the Draft Resolution on Ports, submitted in second reading to the Commission of Enquiry at Paris, was urgently called for in London in order to be inserted in the Treaty of Sèvres, and applied to the Ports of Constantinople, Smyrna, Alexandretta, Kaifa, Basra and others. It is therefore a text which is already in force, and the Draft proposed to us has already rendered the great service of enabling a regime which had to be hurriedly prescribed, to be based on the work of the Commission of Enquiry, thus avoiding the risk of serious errors which might have resulted from a hurried draft. I think that is ample proof that the time is ripe to draw up a text on ports. Our text is really only a standard statute suitable for application. We were all agreed at the Commission of Enquiry at Paris that the time was not ripe for an International Convention on Ports, but all that we did was to discuss a suitable regime which might be applied to ports which were declared to be of international concern. It would be a great loss if we were obliged, owing to lack of time, to postpone this matter; the opinion of the British Delegation is that the adoption of this regime voluntarily by certain States in their own interests might prove to be a very great advantage to the ports concerned. I have been much interested, since I have been here, to hear of one State which is seriously considering placing one of its ports under this regime. I therefore really think that the advantages of this Resolution, which in its present form does not bind anybody, are very great. As to the question of time, I admit that that argument is serious, but I would suggest that it is

not necessary to decide actually to-day whether to continue our study of this text or to shelve it. As the question has now been referred to us, let us wait two or three days to see if we have not time to consider this text, and to use it at least as a basis of discussion in order that there may be something which may serve until such time as the League of Nations has considered whether it is possible or not to take any further action in this direction.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I agree with the remarks of the British Delegate.

M. LELY (Netherlands; speaking in French). — I quite agree with the British Delegation that we should now discuss the proposed Draft on Ports. Article 379 of the Treaty of Versailles speaks of three conventions,—on navigable waterways, ports and railways.

M. SCASSI (Greece; speaking in French). — For the reasons which have been adduced, I also support the British Delegate.

M. BIGNAMI (Italy; speaking in French). — I only wish to say that in view of the reasons adduced by the British Delegate, I think we must wait a few days to decide whether the Draft Resolution is to be considered now or referred to a later Conference.

The CHAIRMAN (speaking in French). — Does General Mance think that a sub-committee should be formed now or that the question should be left in abeyance for two or three days?

Mr. H. O. MANCE (Great Britain). — The President's words have suggested an idea to me. If it were possible to set up a Sub-Committee on which there would not sit the same Delegates as the Waterways Committee,—a Sub-Committee consisting simply of Delegates of States who have ideas on the subject—it might be useful for them to meet to discuss the matter and ascertain whether, in the event of our examining it here in the Committee, there are likely to be serious difficulties. That would help us very much in deciding whether we can spare the time for it.

The CHAIRMAN (speaking in French). — There are two questions before the meeting; firstly, the main question raised by M. Winiarski, with regard to which two different views are held, and, secondly, the question of the method to be employed in forming the Sub-Committee. We must come to a decision with regard to the preliminary question,—that raised by M. Winiarski, that is to say, the advisability of considering the Draft now before us.

M. WINIARSKI (Poland; speaking in French). — I would say two words in answer to General Mance. I agree with him that what we did at Paris and what we have before us here is perhaps good, even very good. Perhaps some States will voluntarily accept this regime as far as they themselves are concerned; but at Paris I always heard the contrary. All the States represented on the Commission declared that they would never accept it for their own ports. If, as General Mance supposes, a State wished to apply this scheme to any of its ports, it would always be free to do so. We are not here to prepare a Convention which will not be binding on anyone. If a State wishes voluntarily to apply the international regime to any of its ports, the *Green Book* is a treasure rich enough to enable it to be taken as a model.

I do not know whether the Treaty of Sèvres has been ratified and is in force. If so, perhaps it would be better to wait until the provisions regarding ports have been applied and produce results. If this experiment is successful, the Council of the League of Nations will in a few years submit the question to the General Conference on Communications and Transit.

The CHAIRMAN (speaking in French). — M. Winiarski has alluded to what took place at Paris. I for my part would be very pleased to hear M. Haas on this subject.

At Paris I was the head of a delegation, I attended the Commissions, but I was sometimes absent from important meetings. I will ask the Secretary-General to be so good as to speak on the subject.

M. HAAS (Secretary-General of the Conference; speaking in French). — As the Chairman has appealed to my memory, I will only say that I am somewhat astonished at the discussions which have arisen here today, in view of the fact that at Paris nothing was adopted so rapidly and easily as this modest draft scheme, establishing a standard type of statute for ports placed under an international regime. I do not know whether at that time all the delegates represented swore in their inmost heart never to apply this regime to their own territory, but in any case—and perhaps this was the very reason—no amendment was submitted to the first scheme proposed, and I think it was adopted at the very beginning of the meeting. Moreover, these two meetings were occupied not so much with the discussion of amendments on matters of detail as with an exchange of views with the object of clearly setting forth the fundamental character of this resolution, which is not in any way, to any degree and by any manner of means a convention or international engagement of any kind; it is merely a standard type of statute, placed like a tool at the disposal of whoever might require to use it at any given moment.

I think that whatever opinion may be held regarding this text (and I am fully alive to all the arguments which take account of the formidable task which the Committee must undertake) this work must certainly be regarded as an attempt at one of the practical services which the League of Nations may render to the States of the world whenever they may need it. There was no question of imposing the regime laid down in this Resolution on any State whatever, in any circumstances, or at any time. The intention was merely that, in certain specified political or territorial conditions, States undertaking mutual engagements might need a ready-made regime for ports. This intention was formulated before the Treaty of Sèvres was thought of, and the Treaty of Sèvres, as General Mance has said, confirmed this aspect of the matter in a most striking manner, since the Commission of Enquiry, without knowing or willing it, was found to have produced certain of the provisions which were included in this Treaty.

It has been said that similar cases may occur; it has even been said that, apart from international treaties, there might be numerous instances in which States might wish, on their own initiative, and simply in their own interests, to place their ports under this regime, and that we might perhaps take advantage of a meeting of technical experts—the gathering was then incomplete, but today is of a world-wide character—and utilise these exceptional circumstances to render these States this service in advance once and for all. The problem before the Conference is to weigh on the one hand its very natural haste to terminate its labours and to devote as much as possible of its valuable time to that part of its work which I am the first to recognise as particularly essential, and, on the other hand, the fact that it would be a great pity, when technical experts from all parts of the world are assembled here, not to use their services as fully and completely as possible.

M. DUCHÊNE (France; speaking in French). — I should like to add a few words to the statements which have been made on either side. I think that we are all agreed; it is very difficult,—nay, almost physically impossible at the point which we have reached in our work—to consider this question thoroughly. On the other hand we are all agreed, as General Mance has said and as the Secretary-General has reminded us, that the study of this Draft can always be resumed when the regime of a port has to be defined. If we wish to take further steps and ask a special Committee to make a complete study of the question, I think it would not have the time to do so, and it could not produce anything better than the Draft which we already have before us.

Could we not all agree to simplify the task of the Conference on this point by confining ourselves to a resolution which would be a real recommendation in the proper sense of the word? We would recommend all States Members of the League of Nations, and all Powers which at any particular time might wish to define the regime of a port, to put into practice the provisions contained in this Draft, by adapting them as far as possible to the circumstances with which they might be faced.

The CHAIRMAN (speaking in French). — That is a secondary question. The primary one is whether we are to postpone the whole matter.

Mr. H. O. MANCE (Great Britain). — The contribution of M. Duchêne to our discussion is a very useful one, and if, in the last resort, we cannot go further with this recommendation, it might be desirable to have a resolution of that nature as a provisional measure, rather than drop the matter. At the same time I think there would be a great advantage in setting up a small, even if unofficial, Sub-Committee, to ascertain the views of any delegates who have perused the Draft and can give us their experience on the subject. If there are no very serious objections to the Draft, and if we have no time to carry it through in its present form, we could, in the last resort, contemplate the adoption of M. Duchêne's proposal.

M. WINIARSKI (Poland; speaking in French). — I still maintain my proposal.

The CHAIRMAN (speaking in French). — The effect of M. Winiarski's proposal would be that we should defer this matter to a later and more appropriate date.

M. WINIARSKI (Poland; speaking in French). — ...to be fixed by the Council of the League of Nations?

The CHAIRMAN (speaking in French). — ...to be fixed by the Council of the League of Nations.

Mr. H. O. MANCE (Great Britain). — Before the vote is taken, may I point out that it seems to me that the only question immediately before us is whether we decide now to postpone the matter or whether we leave the decision to a later date? According to my proposal, the question was to be left open until we had ascertained how much time was at our disposal. The proposal of the Polish Delegate is to settle it now.

In order to help us to arrive at a decision, I suggest that we should invite those States which are interested in this scheme, and which have special competence in it, to assemble unofficially under the chairmanship of M. Freire d'Andrade, for example, to see whether they can make any suggestions which would enable us to ascertain whether our text should take the form of recommendations, or, as suggested by M. Duchêne, of a resolution.

M. WINIARSKI (Poland; speaking in French). — I accept General Mance's proposal. This small committee, which will be composed of any delegates who wish to be members of it, will show us its reasons why this question must be fully discussed and a resolution or draft convention passed now.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — It would be better to take a decision now on the question whether we are to examine the matter or not. Why should we appoint a committee to examine it if we are not to deal with it?

The CHAIRMAN (speaking in French). — Has M. Winiarski withdrawn his first proposal, and does he second that of General Mance?

M. WINIARSKI (Poland; speaking in French). — Yes, because the principle of the question remains the same. It is in the interests of general agreement that I second General Mance's proposal.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — You stated that this sub-committee is to ascertain whether the question should be dealt with now or not.

M. WINIARSKI (Poland; speaking in French). — I shall wait for the opinion of this sub-committee before again putting forward my proposal.

M. DETCEUF (France; speaking in French). — M. Winiarski appears to have somewhat misunderstood General Mance's proposal. General Mance proposes to appoint a sub-committee to consider the draft, whereas M. Winiarski apparently only wishes this sub-committee to consider whether it is desirable or not to examine the question now. Thus M. Winiarski thinks that when, in a few days' time, the sub-committee submits its report, it will be only the question of the desirability of discussing this subject which will be dealt with, whereas General Mance's intention is that it is the question as a whole that should be treated.

M. WINIARSKI (Poland; speaking in French). — On the contrary, I think that I agree with General Mance. This sub-committee cannot possibly discuss the principle of the question before a discussion has taken place here. The sub-committee which will discuss the timeliness of the question will naturally discuss details of the scheme as well, but its chief object will not be to discuss the principle of the question itself.

Mr. H. O. MANCE (Great Britain). — My proposal is this : We are asked whether we should continue the study of this Resolution or not. We need not decide for two or three days, and in the meanwhile, in order that we may know whether the matter could be completed at one sitting, for example, or whether it would entail a week's discussion, I suggest that those who are interested in the Draft should meet in order to state their views upon it, and then that the chairman of the small informal committee should say whether it was unanimously agreed that the measures were suitable, or that there had occurred certain unimportant technical difficulties which could quickly be removed, or else that it would require a week or two's discussion, or that there were serious mistakes which would prevent the proposal from being adopted. After this little informal preliminary report we should know whether it was worth while pursuing the question here, and what form might be given to the text.

M. HAAS (Secretary-General of the Conference; speaking in French). — I think there is still some misunderstanding. The point before us is whether it is desirable to consider the question of ports in its present form. If I understand aright, there are two kinds of possible reasons why the present time is not opportune, and M. Winiarski and General Mance are not considering the same reasons.

In the first place there may be, if I may say so, an undesirability on principle, and it seems illogical to appoint a Committee of Enquiry before this question has been considered. The question whether it is desirable or not to discuss the matter now must be settled immediately. Then there is another point, and it was rather to this I think, that General Mance desired to draw the Committee's attention, namely, that we may agree as to desirability on principle, but we may consider that there is no time for discussion, and that therefore it is undesirable to deal with the question now. The question as to desirability on principle may be settled, subject to the reservation that, if, after its first meeting, the sub-committee realises that the work is difficult and that there will be no time to complete it, the question will be abandoned.

These two questions must therefore be clearly kept apart. On the one hand the question of desirability should be settled at once and, should this desirability be admitted, a sub-committee should be appointed; then if this sub-committee affirms that the difficulties are too great, the matter should be postponed.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I ask the President to consult the Committee as to whether it deems it desirable to deal with the question of ports.

The CHAIRMAN (speaking in French). — M. Winiarski has stated that he has withdrawn his first proposal. M. Fernandez y Medina then proposes that the Committee should state its opinion as to the desirability on principle of examining the Draft relating to Ports now.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — If the Committee decides in the affirmative, a sub-committee will be appointed. If, on the other hand, it decides in the negative, the matter will be closed.

The CHAIRMAN (speaking in French). — I call upon the Committee to take a decision on the following question which has been put by M. Fernandez y Medina : Does the Committee consider that it is desirable on principle to consider the Draft relating to ports now?

The Committee decided by 25 votes to 5 that it was desirable to consider the Draft relating to Ports.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I ask that the Committee should follow the usual procedure and appoint a sub-committee, and that in nominating the members account should be taken of the various views and qualifications, and not of particular interests.

M. LASSALA (Spain; speaking in French). — The Committee seems to have lost sight of the question which was clearly stated by the Secretary-General. We have decided that it is desirable on principle to consider the question of ports. We must now take a decision as to whether, as General Mance proposes, it would not be better from a practical point of view, in order to waste as little time as possible, to appoint a small committee to examine the question in detail.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — It is for the Committee to decide what form it wishes the sub-committee to take. If it so desires it may even enter upon the general discussion of the Draft at once; I should not object. I simply spoke of the form which the sub-committee should take. I have in mind not a small committee but a sub-committee of the usual kind.

The CHAIRMAN (speaking in French). — If there is no objection we will now appoint a committee composed on normal lines. As regards the composition of the sub-committee, the Officers of the Conference propose the following :

The Delegates of Austria, Belgium, Brazil, Chile, China, France, Germany, Great Britain, Greece, Italy, Japan, Netherlands, Norway, Poland, Portugal, Serb-Croat-Slovene State, Spain and Uruguay.

If there is no objection, this is decided (1).

The meeting adjourned at 7.50 p.m.

(1) Apart from certain amendments mentioned during the discussion of the articles for which they were respectively proposed, the following counter-scheme to the Draft Resolution was proposed by the Chilean Delegation :

DECLARATIONS AND RECOMMENDATIONS RELATING TO THE INTERNATIONAL REGIME OF PORTS

The Conference declares :

1. That the nationals, property and flags of all nations shall enjoy complete freedom in the use of ports or portions of ports, with or without free zones, placed under the authority of the League of Nations or under an international regime.

2. That the use of the ports, as provided for in the preceding article, as well as dues and charges, shall be based on perfect equality between the nationals, property and flags of all nations.

3. That, in the absence of special provisions, the administration of any ports controlled by the League of Nations or placed under an international régime shall be placed under such authority as may be appointed by the Council or under the authority of the State which exercises its sovereignty or authority in the said port.

4. That the courts of the State which exercises sovereignty or authority in the port shall be recognised as the competent authority in civil, administrative, commercial and penal matters.

5. That the State under the sovereignty or authority of which the port is situated may, in so far as the exercise of national maritime coasting-trade is concerned, treat the port in question in the same way as its other ports.

6. That the provisions are valid in time of war in so far as is compatible with the rights and obligations of belligerents and neutrals.

7. Any disputes as to the interpretation and application of the provisions in question, as well as, in general, all disputes relating to the use of the port, shall be brought, in the first instance, before the International Commission entrusted with the duty of administering the port, if such a Commission shall have been appointed; should no such International Commission exist, or should its decisions prove unacceptable to any one of the States, any State may appeal to the Permanent Court of

International Justice under the conditions and according to the procedure which shall be laid down by the League of Nations.

The Conference recommends :

1. That the League of Nations, as regards the ports placed under its authority; and the States which exercise sovereignty or authority over ports subjected to an international régime, should adopt such measures as would ensure :

a. That the subjects, property, and flags of the different States should be treated on a footing of perfect equality, particularly as regards berthing facilities, loading and unloading, and tonnage, harbour, pilotage, light-house and quarantine dues and charges, levied on behalf of and for the benefit of the Government, public authorities, private individuals holding concessions, corporations or establishments of any kind whatsoever. In particular no distinctions shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

b. That there should be no restrictions to the free use of the port, other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such regulations should be reasonable and uniform, and should not unnecessarily impede traffic.

c. That all charges imposed for the use of the port should be levied under conditions of perfect equality, and should be reasonable, and should take into account the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the use of the port and its approaches. The tariff of these charges should be posted up in every such port.

d. That suitable measures should be taken for carrying out works of upkeep and improvement in the ports administered by the State which exercises sovereignty or authority over these ports, should be executed in such a manner as to remove any obstruction or danger to navigation, and to facilitate the carrying out of necessary operations by vessels in the port.

e. That measures should also be adopted whereby the State under whose sovereignty and authority the port is situated, should be bound in every case to refrain from undertaking any works liable to prejudice the free use of the port or of the approaches thereto.

2. That all customs, local octroi or consumption duties, levied on imports or exports through a port which is subject to the international régime, should be uniform, irrespective of whether the vessel which has effected, or is to effect, the transport flies the flag of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances reasonably justifying an exception on grounds of economic needs these duties shall be fixed on the same basis, and at the same rates, as similar duties applied at the other customs frontiers of the State concerned; and all facilities which might be accorded by such State over other land or water routes or in other ports for imports and exports shall be similarly accorded to imports and exports through the port subject to the international régime.

3. That the facilities granted for the erection or use of warehouses, and also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise, and all other duties of whatever description, with the exception of the duties provided for in Article 5 of these Recommendations. It shall be within the discretion of the State under whose sovereignty or authority the port is situated, to permit or prohibit manufacture within the free zone.

4. That, in the absence of any special provisions, the State under whose sovereignty or authority the port is situated may not, in connection with the reservation of national maritime coasting-trade, assimilate the free zone of the port to its other ports.

5. That no duties or charges, other than those provided for in Article 1 paragraph c) of these Recommendations, shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come, or for which they are destined, other than a statistical duty, which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic of the port.

6. That duties provided for in Article 2 of these Recommendations may be levied, under the conditions established in the said Article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

7. That the disputes of which mention is made in Article 1 of the above Declarations may in cases of urgency be accorded an accelerated procedure, the International Commission, the Permanent Communications and Transit Committee, and the Permanent Court of International Justice, having the power without prejudice to the final conclusion, opinion and judgment on the basic cause of the dispute, of pronouncing a provisional conclusion, opinion and judgment to the extent of prescribing any provisional measures designed, in particular, to restore the facilities for the free use of the port which existed before the act or occurrence which gave rise to the dispute.

ELEVENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Friday, April 15th, 1921, at 11 a.m.)

DISCUSSION OF DRAFT RECOMMENDATION SUBMITTED BY SUB-COMMITTEE — APPOINTMENT OF RAPPORTEUR

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF DRAFT RECOMMENDATIONS SUBMITTED BY SUB-COMMITTEE

The CHAIRMAN (speaking in French). — At its last meeting the Committee on Navigable Waterways decided by 25 votes to 5 to consider in principle the regime of international ports. The Sub-Committee formed for this purpose has also considered the desirability of dealing with the question. At the desire of M. Hanotaux, the President, and at the request of several delegations, I agreed to take the chair at the meetings of the Sub-Committee in order to expedite this work. The Sub-Committee held two meetings. By agreement with the Officers of the Conference, it asked M. Haas, our Secretary-General, to make a verbal report at the beginning of this meeting of the Committee.

M. HAAS (Secretary-General of the Conference; speaking in French). — The Sub-Committee examined the Draft Resolution relating to the international regime of ports and drew up a text which was unanimously adopted.

At the beginning a fresh discussion arose as to whether the question of ports should be studied at once or not, and whether it should be studied under the form given to it in the *Green Book* Draft. The Sub-Committee voted in the affirmative, as the Committee had done. This question of principle having been settled, no difficulty arose when the texts came to be examined in detail. None of the amendments which were submitted affected the question of principle; they all aimed either at improving the text or bringing it into accord with corresponding provisions which had already been adopted, particularly in the Convention on Freedom of Transit. In view of the small number of changes introduced into the Draft, I think there is no need for me to explain at length the import of this Resolution, to which there is a commentary in the preparatory work of the Conference (1). I think the best method would be for me to read the text article by article. As each article is read I will state the view of the Sub-Committee upon it, and the work done; the Committee may then, if it wishes, amend the text.

The CHAIRMAN (speaking in French). — If there is no objection to the method of work proposed by M. Haas, we will proceed in the manner which he has indicated.

M. HAAS (Secretary-General of the Conference; speaking in French). — In the first place the British Delegation proposed a change in the title. It asked that the title

(1) See p. 230.

should be, not *Draft Resolution Relative to an International Regime for Ports*, but *Draft Resolution Relative to Ports to Which an International Regime is Applied*.

The Sub-Committee, however, considering that this change might give rise to differences of interpretation, retained the original title.

The CHAIRMAN (speaking in French). — Is there any objection to retaining the title?

The original title was retained.

M. HAAS (Secretary-General of the Conference; speaking in French). — The proposed Preamble reads as follows : —

The General Conference on Freedom of Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the Regime of Ports, nevertheless is of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international régime, it being clearly understood that such a régime can only be applied in consequence of a special act involving, in particular, the consent of the State under whose sovereignty or authority the said port might be situated.

In connection with the Preamble the question arose as to what form should be adopted. The text takes the form of a Resolution, but I think that it should not be kept in this form. In the Scheme of Organisation and the Rules of Procedure of the Conference, the word *resolution* is used only for drafts which are to be submitted later to the Assembly of the League of Nations, and this is not the case here. It would be well therefore to adopt the term *recommendations*, which from the technical point of view is more exact here. Moreover the text of the Preamble accords in every respect with the meaning of the word *recommendations*.

The original text read : — *ports... which may be placed under the authority of the League of Nations, or under an international regime...* The words *under the authority of the League of Nations, or* have been deleted. This is one of the special cases of the general international régime, and this expression was therefore unnecessary.

M. WINIARSKI (Poland; speaking in French). — What will the legal purport of this document be if we substitute the word *recommendation* for *resolution*?

M. HAAS (Secretary-General of the Conference; speaking in French). — In our Scheme of Organisation it is laid down that the work of the Conference may take one of three final forms,—a convention, recommendations or a draft resolution to be submitted to the Assembly of the League of Nations. There is no question here of a convention, nor, I think, is it the intention of the Conference to include this question among those which are to form the subject of a resolution of the Assembly; it does not belong to the immediate sphere of action of the League of Nations. It can therefore be submitted only in the form of recommendations. Moreover, if the Conference adopts this text it will be a recommendation which it will make to those States which are to apply an international régime, and not a general recommendation to States for all their ports.

M. WINIARSKI (Poland; speaking in French). — If the text took this form, then, would a resolution have no force until it had been approved by the Assembly of the League of Nations?

M. HAAS (Secretary-General of the Conference; speaking in French). — In accordance with the Rules of Procedure, the Conference may adopt whatever resolutions it pleases, but hitherto such decisions as have been taken by the Conference have, from the technical point of view, been called recommendations. The word *resolution* must be reserved for cases in which the internal organisation of the League of Nations is concerned, such as, for example, if the Council or the Assembly of the League of Nations had asked a Conference such as ours to prepare a resolution for it; that is not so here.

M. WINIARSKI (Poland; speaking in French). — If we adopt the form of recommendations, such recommendations become *ipso facto* an act of the League of Nations. The Polish Delegation considering that this is not the proper time for this Draft Resolution, and that in certain circumstances it may prove a very dangerous one, has stated that it will vote against it. Its attitude cannot be modified by the fact that the resolution has been transformed into recommendations. The Polish Delegation will not take part in the discussion of this Draft; it reserves the right to speak when the Draft is submitted to the plenary conference.

M. POLITIS (Greece; speaking in French). — The word *recommendations* would be desirable if we were dealing only with one category of ports,—that is to say ports which each State voluntarily placed under the international regime. But there are ports which, in virtue of the clauses of the Treaty of Peace, are compulsorily placed under the international regime. Moreover, if a State voluntarily places one of its ports under the international regime, it is obliged to conform to these recommendations. From that time this document ceases to have the character of recommendations and becomes a statute.

M. HAAS (Secretary-General of the Conference; speaking in French). — But not until then. The technical meaning of the expression is akin to that given to it in Article 405 of the Treaty of Versailles in respect of the organisation of labour. It is not a *vœu*.

M. POLITIS (Greece; speaking in French). — You allude to Article 405. In that case there was a reason for adopting the word *recommendation*; the recommendation with regard to labour was not concluded between States alone, but between States and other organisations such as the labour organisation, syndicates and so on; whereas a Convention cannot possibly be concluded between States and syndicates or labour organisations. The jurists tell me that it is for this reason that the word *recommendations* was used; we ought not to argue, however, from the point of view of Article 405.

M. HAAS (Secretary-General of the Conference; speaking in French). — If a better word than *recommendations* is found, I shall not object to it. We could put nothing at all, which would be even simpler.

M. POLITIS (Greece; speaking in French). — We could put *standard statute*.

M. DETŒUF (France; speaking in French). — But we should specify that there is nothing obligatory.

M. POLITIS (Greece; speaking in French). — Of course.

M. DETŒUF (France; speaking in French). — M. Politis has said that ports placed under an international regime would be compulsorily subjected to the provisions of our statute. I think that would certainly be exceeding the intentions of the authors of the Draft. There is no question of an obligatory statute; the assent of the States concerned would have to be obtained in order to transform these recommendations into a statute.

M. POLITIS (Greece; speaking in French). — I think that is not the question.

M. HAAS (Secretary-General of the Conference; speaking in French). — It is a statute which is recommended to the notice of the Governments; it was in this sense that I used the word *recommendations*.

The CHAIRMAN (speaking in French). — We have assembled and studied this question, and we recommend, in the ordinary sense of the word, that this standard statute should be taken into consideration whenever a port subject to an international regime is created anywhere either in virtue of special agreements or simply of a decision.

M. POLITIS (Greece; speaking in French). — When a State once agrees to place one of its ports under an international regime, it binds itself to apply this statute.

M. HAAS (Secretary-General of the Conference; speaking in French). — The question really arises only in theory. When a State consents to apply the international regime to any port, it will not merely say in a general way, "I intend to apply the international regime"; it will say, "I am applying to such and such a port a regime provided by the recommendations issued by the League of Nations".

M. DETŒUF (France; speaking in French). — ...or some other regime. States will always reserve the right to place a port under an international regime which will not necessarily be exactly the same as that provided in this Convention.

M. POLITIS (Greece; speaking in French). — Will this statute be compulsorily applied to a port placed under international regime in conformity with the Treaty of Peace?

M. HAAS (Secretary-General of the Conference; speaking in French). — As far as I know there are no such ports. In a large number of ports named in the Treaty of Sèvres a regime obtains which is practically the same, but which is not derived from a text such as this. It is a regime which does not conform to the amendments which we have made, but which, apart from certain changes, has a similar text.

The CHAIRMAN (speaking in French). — The question of administration is not mentioned in the Treaty of Sèvres. The authors of that treaty considered the standard statute very carefully, but did not blindly conform to it. They took what was good in the text, and I think that this will always be done by States when creating international ports. I think that M. Detœuf has summed up the spirit of the text very lucidly.

M. POLITIS (Greece; speaking in French). — I am now clear on the point. In the case to which I refer this statute is not obligatory.

M. VELASQUEZ (Paraguay; speaking in French). — It is clear from the text of the Preamble that there is no question of a Convention here; as far as I can see the text does not state whether it is to be recommendations or a resolution. I think that the following words should be included in the text :—...*recommends nevertheless that the following provisions should be applied.*

The CHAIRMAN (speaking in French). — You are quite right, and the text will be modified as you suggest.

M. LASSALA (Spain; speaking in French). — At the end of the text it is stated that *the State under whose sovereignty or authority...* I think we should put *the consent of the States under whose sovereignty or authority...*

M. HAAS (Secretary-General of the Conference; speaking in French). — It is certainly possible for two States simultaneously to exercise sovereignty over a port.

The CHAIRMAN (speaking in French). — Has anyone any further observations to make on the Preamble? The final text will therefore read as follows :—

The General Conference on Freedom of Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the Regime of Ports, recommends that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international regime, it being clearly understood that such a regime can only be applied in consequence

of a special act involving, in particular, the consent of the State or States under whose sovereignty or authority the said port might be situated.

I put this text to the vote.

The text of the Preamble was adopted.

ARTICLE 1

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I will read Article 1, which comes under the heading *General provisions*.

Freedom to use the Port and Equality of Treatment.

The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. In this connection and in all respects, they shall be treated on a footing of absolute equality particularly as regards port facilities and charges of every description, including facilities for stationing, loading and unloading, and tonnage, harbour, pilotage, lighthouse, and quarantine duties and charges, levied in the name of, and for the profit of, the Government, public authorities, private individuals or companies, corporations or establishments of whatever kind. In particular, no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions to the free use of the port other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

Article 1 was adopted.

ARTICLE 2

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The Italian Delegation pointed out that the second paragraph contained the following words:—*Subject to the provisions of Articles 8, 10, 11 and 12* and that there was no need to mention Article 12. The reference to it was therefore deleted, as this article does not establish any due, but merely refers to the stipulations laid down in other articles.

The text of Article 2 now reads as follows:—

Charges for Services Rendered.

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the interests of their users. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8 and 11, all other dues and charges are prohibited.

Article 2 was adopted.

ARTICLE 3

M. HAAS (Secretary-General of the Conference; speaking in French). — The Portuguese Delegation proposed to substitute for the words *suitable measures* the words *such measures as lie within its means*. The British Delegation proposed to omit the words *and improvement* in the title, and in consequence of the British amendment the Portuguese Delegation withdrew its amendment. The title alone therefore was altered; and in any case it should have been *works of upkeep*, because the text only mentions works of upkeep.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Will the words *and improvement* be left in the text?

M. DETŒUF (France; speaking in French). — I think these words may be entirely omitted; upkeep includes improvements.

M. POLITIS (Greece; speaking in French). — If this is to be a recommendation, we cannot say *it shall be the duty*...

M. HAAS (Secretary-General of the Conference; speaking in French). — Our intention is that it should be possible to take our text and embody it in a unilateral act or a treaty. We are therefore obliged to make use of the legal form, but we leave everyone free to accept our text or not.

M. DETŒUF (France; speaking in French). — If we were to say in our Preamble, "I undertake to observe this statute", the question would certainly become clear; but we prefer the form of recommendations.

M. POLITIS (Greece; speaking in French). — You said just now that a State, when establishing an international regime for a port, need not necessarily accept the regime indicated by you.

M. DETŒUF (France; speaking in French). — That is understood, but if the State accepts our regime it is obliged to apply the statute.

The CHAIRMAN (speaking in French). — If no-one else asks to speak I will put the text of Article 3 to the vote. It reads as follows :—

ARTICLE 3

Works of Upkeep.

In the absence of any special organisation for carrying out works of upkeep, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any obstacle or danger to navigation, and to facilitate the carrying out of the necessary operations by vessels in the port.

Article 3 was adopted.

ARTICLE 4

M. HAAS (Secretary-General of the Conference; speaking in French). — The Portuguese Delegation proposed an alteration, the object of which was to make it easier to adopt this regime voluntarily by allowing works to be undertaken which were considered by the State to be calculated to facilitate the use of the port, subject, however, to the option of suspending such works if they prejudice the facilities for the use of the port (1).

The Italian Delegation proposed an amendment for the purpose of bringing this text into accord with the provisions of the Convention on Freedom of Transit and the Convention on Navigable Waterways, in connection with the safety of the State, and so on (2).

The Sub-Committee therefore drew up the following text, which takes both these amendments into account :—

Works Dangerous to the Use of the Port.

The State under whose sovereignty or authority the port is situated may undertake all works calculated to facilitate the use of the port or the approaches thereto. It shall not be

(1) The amendment of the Portuguese Delegation is as follows :—

New text of Article 4 :—

"The State under whose sovereignty or authority the port is situated may undertake all works which it considers calculated to facilitate the use or accessibility of the port. Works thus undertaken may not be suspended unless it is proved that they are likely to interfere with the facilities for using the port or with the approaches thereto."

(2) The amendment of the Italian Delegation was as follows :—

Add at the end of the article :—

"It shall, however, be permitted to undertake works intended for territorial defence, care being taken, as far as possible, to remove obstructions or dangers to navigation."

obliged to suspend such works unless it is proved that they are likely to interfere with the facilities for using the port or its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken, as far as possible, to avoid obstructions or dangers to navigation.

M. KRBEC (Serb-Croat-Slovene State; speaking in French). — Are we to keep the titles of the Articles? In the Convention on Transit it was proposed to omit them. If they are kept, we must change the title of Article 4, as it no longer deals only with dangerous works. The first sentence contains a positive provision empowering a State to undertake works of improvement.

The CHAIRMAN (speaking in French). — The question is whether the titles of all the articles will be deleted.

M. HAAS (Secretary-General of the Conference; speaking in French). — All the titles of the articles might be omitted and only the titles of the chapters and the sections be retained. This is what has been done elsewhere.

The CHAIRMAN (speaking in French). — M. Krbec thus receives satisfaction. The titles of the articles will be omitted. If there are no further remarks on Article 4 I will put it to the vote.

Article 4 was adopted.

ARTICLE 5

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

Article 5 was adopted.

ARTICLE 6

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

Article 6 was adopted.

ARTICLE 7

The State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports.

M. HAAS (Secretary-General of the Conference; speaking in French). — Article 7 resulted in a somewhat lengthy debate in which the question arose of a standard type of statute for ports. The Japanese Delegation proposed the omission of this article, which allows national maritime coasting trade subject to the special regime for free zones. If Article 7 were omitted, the result would be no longer to allow the territorial State to include in the standard statute a provision reserving coasting trade for itself. In connection with this article the Japanese Delegation also proposed that a special Convention should be concluded consisting of one article only, which I will read :

Each of the Contracting States undertakes to recognise to the flags of the other Contracting States, subject to reciprocity, the right of maritime coasting trade in their respective territorial waters.

A long discussion took place. It became apparent that a majority of States would not be able to agree to the Japanese amendment to Article 7. The Japanese Delegation then withdrew the amendment.

As regards the Convention composed of a single article, which gave rise to the general discussion of the reservation of maritime coasting trade, many of the delegations pointed out that they could not possibly accede to such a Convention. Moreover, certain delegations raised the objection that this question was not one upon which they had

received instructions, and that therefore it did not appear possible to consider it here and now. In these circumstances the Japanese Delegation considered that it could no longer press the point, and that the attention of the Governments would be drawn to this question, which was of particular concern to them by the very fact that it had been raised here and that it could not be considered, as the delegations had no instructions in the matter. In these circumstances Article 7 was adopted without change.

The CHAIRMAN (speaking in French). — I think the Committee agrees that this article shall be retained.

Article 7 was adopted.

ARTICLE 8

All customs, local octroi or consumption duties and accessory charges levied on imports or exports through a port which is subject to the international regime must be uniform, irrespective of whether the vessel which effected or is to effect the transport flies the flag of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances reasonably justifying an exception on account of economic needs, the customs duties shall be those of the tariffs applied at the other customs frontiers of the State concerned, and all facilities which might be accorded by such State over other land or water routes or in other ports for imports and exports shall be equally accorded to imports and exports through the port subject to the international regime.

M. HAAS (Secretary-General of the Conference; speaking in French). — The Portuguese Delegation moved an amendment as follows :—

Customs Duties may be reduced when it is a question of importation or exportation of goods produced by the State having sovereignty or authority in the port, and originating in or destined for another port of the same State.

After explanations had been given as to the meaning of Article 8 the amendment was withdrawn. The Italian Delegation pointed out that the text could not possibly be kept in its existing form and that the words *excepting accessory expenses in connection with the operations of supervision and administration* would have to be added after the word *duties*.

The British Delegation also moved a purely formal amendment to insert the word *customs* before the word *duties*.

Article 8 was adopted by the Sub-Committee with the text which the President has read.

M. KRBEK (Czecho-Slovakia; speaking in French). — In Sub-Committee I moved a suggestion that we should adopt as far as possible the same terms as those of the Convention on Navigable Waterways, but as the Sub-Committee had not this text before it, we referred the question to the Committee. I propose that where *customs duties* are in question, we should state that such customs duties shall not be higher than those levied at other customs frontiers. The text would thus be more logical and more elastic.

M. HOSTIE (Secretary-General of the Conference; speaking in French). — The texts of the Navigable Waterways and that of the Ports were identical in the *Green Book*. The Waterways text has been very considerably changed, particularly as a result of the amendment by the French Delegation. The Ports text was slightly amended also, more especially with a view to taking into account certain Italian proposals. From the logical standpoint, and as far as the good appearance of our text is concerned, it would be a pity not to adopt here the Waterways text, as M. Krbek proposes. Nevertheless I have some slight scruple, because the Italian amendment would no longer be completely safeguarded. The wisest course would be therefore simply to adopt the Waterways text and to ask the Italian Delegation to consider the question on the basis of this text, and perhaps to propose an amendment to the wording which would have become common to the two texts, for the time when we can finally adopt the Waterways text.

M. POLITIS (Greece; speaking in French). — Could you explain the difference in a few words? I supported the amendment the other day.

M. HAAS (Secretary-General of the Conference; speaking in French). — Here is the corresponding Waterways text :—

3. In the application of customs or similar duties levied on imports and exports through the said ports, no difference shall be made by reason of the flag flown by the vessel carrying, or to carry, the goods, whether it be national or belonging to any one of the High Contracting Parties.

4. The State under whose sovereignty or authority a port is situated may withdraw the benefit of the preceding paragraph from any vessel, if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

5. In the absence of special circumstances which would adequately justify an exception from this provision, on account of economic necessity, these dues must not exceed those which are levied on the other frontiers of the State concerned, on goods imported and exported under the general conditions of the legislation of this State.

All the facilities which may be accorded by the High Contracting Parties, on other land or water routes, or in other ports, for the imports and exports of goods, shall be equally accorded to imports and exports under the same conditions by the navigable waterway and the ports referred to above.

M. POLITIS (Greece; speaking in French). — You make no distinction between customs dues properly so-called and accessory expenses. We wished, as did M. Sini-galia, to lay stress upon the fact that customs dues are the same whatever the frontier may be, but that accessory expenses may not be the same.

M. HAAS (Secretary-General of the Conference; speaking in French). — In the Waterways text, the word *octroi* has disappeared and we now speak only of *customs or similar duties*.

M. POLITIS (Greece; speaking in French). — Customs dues should be the same everywhere, whereas octroi duties may be, and in fact actually are, different.

M. HAAS (Secretary-General of the Conference). — The simplest way would be to return to the Waterways text, but with certain specifications. Instead of *for the application of customs or similar dues* we should say *for the application of customs, local octroi or consumption duties and accessory charges*. In the second sentence we should say *in the absence of special circumstances... the customs duties may not be higher than...* Thus the two Italian amendments will be safeguarded and the rest will be the same.

H. DETŒUF (France; speaking in French). — Our customs expert has no objection with regard to local octroi.

M. POLITIS (Greece; speaking in French). — There is no case in which the duty can be higher.

M. HOSTIE (speaking in French). — It would be better to revert to the Waterways text, which is more elastic. Have you any objection to retaining here, in order to avoid any difficulty as regards the Italian amendment, the words *customs, local octroi and consumption duties*? As we are concerned merely with a standard type of statute, another formula can always be used in actual practice.

M. DETŒUF (France; speaking in French). — I have no objection as regards the standard statute, but only as regards the effect on the Waterways Convention.

The CHAIRMAN (speaking in French). — There is no effect.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — In our country, there is an additional import duty similar to customs dues. The words *similar and consumption duties* might therefore be left.

M. DETOEUF (France; speaking in French). — I have no objection to the words *customs, local octroi... dues*.

H. HOSTIE (speaking in French). — We are all agreed. In the first part we will put *all customs, local octroi and consumption duties and also accessory expenses levied on imports and exports*.

The CHAIRMAN (speaking in French). — Is the Committee of opinion that these words should be kept? We will refer the text of Article 8 to the Drafting Committee.

ARTICLE 9

The facilities granted for the erection and use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise, and all other duties of whatever description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

M. HAAS (Secretary-General of the Conference; speaking in French). — The Portuguese Delegation submitted an amendment to Article 9, to add the words *the facilities of the free zone being capable of extension only to a limited number of products*. After explanations on both sides this amendment was withdrawn.

The British Delegation proposed to add at the beginning of the article the words *The area of the free zone, unless otherwise stipulated and...* The scope of this amendment is wide; it enables the extent of the free zone to be fixed in the standard statute itself, whereas the intention had always been that the extent of the free zone, like that of the port placed under an international regime, should actually be determined, either invariably or variably, in the act placing the port in question under an international regime, whether with or without a free zone. In these circumstances, the original text was adhered to, in order that the standard statute should retain its character. That part of the text which deals with free zones is of the same character as the rest of the text; that is to say, the stipulations contained therein are intended to come into application wherever there are free zones, but without any statement as to the conditions or limits to be applied to the free zones.

Article 9 was therefore adopted in its original form.

The British Delegation also proposed to add to the end of this article the words *but such permission or prohibition must apply equally to the nationals of all countries*. There seemed a certain risk in inserting this amendment at the end of the article, not on account of any lack of unanimity on the subject of this interpretation, but because it was feared that if the condition regarding equality, upon which the whole text is based, were categorically stated in any one particular instance, the inference might be drawn that, *a contrario*, equality would not be imposed in the same conditions in other cases.

Opinion was thus unanimous as regards the view held by the British Delegation; but for this very reason the Sub-Committee decided that the matter should be simply mentioned in the Report as a completely unanimous interpretation of the meaning of this article and indeed of all the other articles of the Ports text, as it would be both useless and dangerous to make it the subject of a provision.

The CHAIRMAN (speaking in French). — As no-one has any further remarks to make on Article 9, I will put it to the vote.

Article 9 was adopted.

ARTICLE 10

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may not, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

M. HAAS (Secretary-General of the Conference; speaking in French). — Article 10 has been retained in its original form. The Serbian Delegation proposed the following amendment:—*Article 10 lays down that in free zones, coasting trade cannot possibly be reserved save as an exception.* The Serbian Delegation asked for the word *not* to be omitted; it proposed to adopt as a principle the possibility of reservation, save as an exception. In practice this amounts almost to the same thing, as the question will have to be settled anew for each separate port.

The Sub-Committee decided to retain the original text, as it considered that the question did not arise under the same aspect for free zones, and for zones which are not free, of ports placed under the international regime; in many cases it is quite possible that when a port placed under an international regime is free, or when part of the port is free, it may perhaps be necessary to safeguard the imports and exports of a neighbouring country either in pursuance of a treaty or if the State so decides. Consequently the facilities for navigation in this free part must not be limited, as they may be absolutely essential to the full development of the imports and exports of the country.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I would ask the Chairman to put this amendment to the vote. We consider that the question is not so simple as it appears; it does not satisfy the States under whose authority the port is placed.

The CHAIRMAN (speaking in French). — The issue is clear. The Sub-Committee rejected the Serbian proposal by 9 votes to 6.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We ask for the word *not* to be omitted. Article 10 would then read as follows:—*...the State under whose sovereignty or authority the port is situated may, in case of...* I think this change is a very just one. It leaves the countries the right of discussion with the State under whose authority the port is situated. I ask the Chairman to put this amendment to the vote.

M. HAAS (Secretary-General of the Conference; speaking in French). — We may vote on the Serbian amendment to omit the word *not*. I think that in Committee a majority vote alone is always sufficient, and that there is no need to secure a two-thirds majority.

The CHAIRMAN (speaking in French). — This was in fact decided at the first two meetings of the Committee of which I have the honour to be Chairman. It is in these conditions, then, that I will put the amendment of the Serb-Croat-Slovene Delegation to the vote.

The amendment was adopted by 18 votes to 9.

ARTICLE 11

No duties or charges other than those provided for in Article 2 shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come or for which they are destined, other than a maximum statistical duty devoted exclusively to defraying the expenses of compiling statements of the traffic of the port, and at most equivalent to 1 per mille *ad valorem*.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — A discussion arose regarding the nature of the basis of the statistical duty, and the Italian Delegation proposed to add at the end of the article the following text:—*should the value of the goods be unknown, the statistical duty shall be based on the weight.* It appeared that the text could not be drafted in such a way as to imply the obligation

to levy dues *ad valorem*. For this reason the text was drafted in the form which has been read to you.

The CHAIRMAN (speaking in French). — I put Article 11 to the vote.

Article 11 was adopted.

ARTICLE 12

The duties provided for in Article 8 above may be levied under the conditions established in the said article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

Article 12 was adopted.

ARTICLE 13

Persons, luggage, goods, vessels, coaching and goods stock, or other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State if proceeding to or from the territory of any other State.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — A few slight changes have been made in this article in order to make it uniform with the Transit text.

The CHAIRMAN (speaking in French). — These are only formal changes. I put Article 13 to the vote.

Article 13 was adopted.

ARTICLE 14

These stipulations do not prescribe the rights and obligations of the belligerents and neutrals in time of war. The stipulations shall, however, continue in force in time of war, so far as such rights and duties permit.

Article 14 was adopted.

ARTICLE 15

This Statute does not impose upon any of the Contracting States any obligations conflicting with its rights and duties as a Member of the League of Nations.

Article 15 was adopted.

ARTICLE 16

Any dispute as to the interpretation or application of these Regulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members in the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

Article 16 was adopted.

The CHAIRMAN (speaking in French). — At the close of the meeting of the Sub-Committee, the British Delegate made a general proposal which raised a somewhat important legal point. We therefore reserved the consideration of this question for the Committee to-day.

Mr. COLVIN (Great Britain). — The Committee will remember that at the close of the second meeting of the Sub-Committee on Ports, the following British amendment was discussed :—

The State under whose sovereignty or authority the port is placed cannot relieve itself of the obligation to ensure that effect is given to the foregoing articles, by any arrangement that it may conclude under which it delegates any part of its authority over the port to any other State, body or person.

Although no decision was arrived at, a certain amount of discussion took place, in the course of which I gathered that the Officers of the Conference were inclined to think that there was no real necessity to insert this amendment in the Ports document itself. I need hardly say that the British Delegation attaches very great importance to the opinion of the Officers of the Conference, and I have therefore taken the opportunity of consulting further with M. Haas. As a result of this discussion, I would like to make the following statement :—

The British amendment was considered necessary in view of the passage in the *Green Book* (1) which might be interpreted in the sense that a State would have the right to transfer its obligations under the Ports Resolution to a concessionnaire, whether a private body or person or another State with whom it would conclude an arrangement to delegate its authority. The true doctrine is, clearly, that if a State has contracted an obligation to apply the Ports Recommendations, it is for that State, should it have delegated its authority, to ensure that the concessionnaire will fulfil the obligations undertaken. If this principle is recognised by a suitable passage in the Report, the British Delegation will not press its amendment.

I am happy to say that M. Haas has informed me that he sees no objection to the adoption of this latter proposal, and I trust it will also meet with the approval of this Committee.

The CHAIRMAN (speaking in French). — You have heard the British view stated. I think M. Colvin's case is so clear that we all agree with him. The question of sovereignty and the transfer of sovereignty is a fundamental one for all our Conventions which involve territorial questions. My view is therefore that this statement should be inserted in the Report, because the conception of sovereignty and the transfer of sovereignty should be made perfectly clear. I would also remind the Committee of the passage in the *Green Book* which defines the view of the Paris Commission on this question (2).

I think, therefore, that no objection will be raised to the request of the British Delegation, and on your behalf I will recommend the Secretariat to mention this statement in the Report.

The great moment has now arrived for the Committee to take its decision on the Draft Recommendations as a whole. I am glad to note the moral agreement which exists.

I will put to the vote the Draft Recommendations as a whole.

The Draft Recommendations were adopted by 27 votes to 1.

(1) See p. 231.

(2) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 286.

This passage, which occurs in the Report on the Draft Convention on Freedom of Transit, reads as follows :—

PREAMBLE. — The expression *authority* applies to every case (suzerainty, protectorate, mandate, etc.) where the State responsible for the carrying out of the Convention does not possess sovereignty over the territory across which the transit takes place. It has been found impossible to determine in advance, in every case, upon which of the signatory States the responsibility will devolve; any difficulties that may arise can be solved individually. The State responsible for a measure is the State which actually possesses the means either to bring about or to prevent its application. Where, for example, sovereignty and authority are apportioned between different States, as a result of "settlements", which would imply such a division of authority, it would be for the States concerned to agree among themselves as to the application of the present Convention.

APPOINTMENT OF RAPPORTEUR

The CHAIRMAN (speaking in French). — On behalf of the Officers of the Conference I venture to propose that our esteemed colleague, M. Fernandez y Medina, be asked to prepare the Report which the Committee will submit to the Plenary Conference. M. Fernandez y Medina has taken a very active part in our proceedings in connection with ports; those who were present at our last meetings will remember the clearness of view evinced by him during the discussion, and the enlightenment which we derived from his speeches. The Officers of the Conference will be very pleased if the Committee appoints M. Fernandez y Medina as Rapporteur. Your applause renders it needless for me to put the proposal of the Officers of the Conference to the vote.

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — I wish to thank the Chairman and the Officers of the Conference for the honour which they have done me, and also my colleagues on the Committee for the welcome which they have accorded to the Chairman's proposal. I shall fulfil my task with the greatest impartiality; I rely above all on the co-operation of our competent and devoted Secretary-General, M. Haas (1).

.....

The meeting adjourned at 12.50 p.m.

(1) The rest of the meeting was devoted to the reading of the Report of the Sub-Committee on Navigable Waterways (See *Verbatim Records and Texts relating to the Convention on the Regime of Navigable Waterways of International Concern*, p. 227).

TWENTY-SIXTH MEETING OF THE CONFERENCE

(Friday, April 15th, 1924, at 6 p.m.)

REPORT ON DRAFT RECOMMENDATIONS RELATIVE TO INTERNATIONAL REGIME FOR PORTS DISCUSSION OF RECOMMENDATIONS

The meeting opened with M. Hanotaux, President, in the Chair (1).

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REPORT ON DRAFT RECOMMENDATIONS RELATIVE TO INTERNATIONAL REGIME FOR PORTS

The PRESIDENT (speaking in French). — We now enter upon the question of ports. M. Fernandez y Medina, Rapporteur, will read you his Report. I call upon him to speak.

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — The Conference decided to refer to the Waterways Committee the question of the Draft Resolution relative to the International Regime for Ports. This Committee had to examine not only the actual text of the Draft submitted, but also a question of principle, namely, whether it was desirable at the present time to examine the question of ports even in the form of a resolution or recommendation. The Polish Delegation had raised this question at the plenary meeting. The Waterways Committee, after discussion, decided by 25 votes to 5 that the time was not inopportune to consider this question in principle, and instructed a Sub-Committee to draw up a draft text. This was approved by the Waterways Committee by 29 votes to 1. It does not appear to me necessary to make any lengthy remarks on this subject. The Conference will find that the text submitted to it contains very few deviations from the *Green Book*. A fairly large number of amendments, however, were put in, and the most of them were considered. They did not touch the question of principle; they were merely slight improvements, most of which were considered advisable; they were mainly intended in some cases to render the regime more flexible, in order to make the voluntary adoption of the Draft as easy as possible, and in particular to bring the provisions of the Draft into accord with those already adopted for the Conventions on Transit and Waterways.

During the discussion some remarks were made which the Committee decided to introduce into its Report. On the subject of Article 9 the British Delegation feared that the last phrase of this article, *it shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture in the free zone*, might cause it to be thought that this authorisation might be given or refused by a State for motives which were not in conformity with the general principle of equality between the nationals of all States. The British Delegation proposed an amendment on this subject. It was considered preferable not to insert any amendment, although the idea of the British Delegation was unanimously accepted. But the Committee thought that the terms of Article 1 relating to equality applied to all

(1) The first part of this meeting was devoted to the discussion of the Recommendations relative to Railways. (See p. 141.)

the provisions of the text, and that in order to avoid any possible error, it was greatly preferable to refer to it only in some of the provisions.

The British Delegation also proposed the following additional Article :—*The State under whose sovereignty or authority the port is placed cannot relieve itself of the obligation to ensure that effect is given to the foregoing Articles by any arrangement that it may conclude under which it delegates any part of its authority over the port to any other State, body or person.* This amendment was considered necessary by the British Delegation as a result of the passage in the *Green Book* which might be interpreted in the sense that a State would have the right to transfer its obligations in regard to the Resolution on Ports to a concessionnaire, whether a private individual or another State, with whom it might come to an agreement with a view to delegating its authority to it. The Committee was of opinion that an article of this nature was out of place in the text; but it unanimously agreed with the British Delegation that such an interpretation would be erroneous, and that the true doctrine of international law would here apply, according to which the obligation as between States signatories to a Convention setting up the present international regime in a port should remain on the State in whose territory the port is situated, and that that State, if it makes any arrangement to delegate its authority, should still have the duty of ensuring that the concessionnaire fulfils the obligations undertaken. It was decided to insert this interpretation in the Report, and on these conditions the British Delegation withdrew its proposal.

In conclusion, I would point out to the Conference that during the discussion of this scheme, a fairly lengthy debate arose on the subject of maritime coasting trade. The Japanese Delegation proposed a Convention consisting of a single article dealing with this question. The Committee was of opinion that the question of maritime coasting trade in general was not among those covered by the instructions given to most the delegations, and in these circumstances the Japanese Delegation did not press its proposal. The question of maritime coasting trade was considered, then, only in connection with Articles 7 and 10, relating to the reservation of maritime coasting trade in ports placed under the international regime or in the free zones in those ports. One of these articles was adopted as it stood by 18 votes to 9, following an amendment submitted by the Serb-Croat-Slovene Delegation to admit the principle of reservation of maritime coasting trade even as regards the free zones. The Sub-Committee on Ports had previously registered a vote to the contrary by a majority of 9 to 6.

The Conference is now called upon to examine the text which is presented to it in the form of Recommendations. In accordance with the Scheme of Organisation for the Conference it is not, in the strict and technical sense of the word, a resolution which is here being dealt with,—it is recommendations. If the Conference adopts this text it will recommend a standard type of statute for ports submitted to the international regime, to such States as may, should occasion arise, think fit to apply it by means of a special act.

The PRESIDENT (speaking in French). — I thank M. Fernandez y Medina for his clear and concise Report. We will now read the text as adopted by the Committee, but before reading it, I will call upon the Delegate of Poland to make a statement.

M. WIELOWIEYSKI (Poland; speaking in French). — During the discussion in the Commission of Enquiry on the Draft Resolution on the International Regime of Ports, the Polish Delegation, together with several other Delegations, considered that the desirability of such a Resolution was not sufficiently evident. In spite of this conviction the Polish Delegation took part in the discussion, which all the delegations then considered as of a purely theoretical nature. Our Delegation adhered to its policy, and, being of opinion that no subsequent fact had arisen to justify the present consideration of this question by an International Conference, proposed, at the time when the question appeared on the Agenda of the Conference, to postpone consideration of it to a subsequent date, when the right time should come for so doing. The discussion in Committee and in Conference did not convince the Polish Delegation either of the utility or of the desirability, in present circumstances, of an international act which, even though only in the form of Recommendations, should pledge the high authority of the League of Nations.

For these reasons, the Polish Delegation, to its great regret, cannot conscientiously vote for the proposed Resolution, and reserves to its Government full freedom of action on this subject.

The PRESIDENT (speaking in French). — This statement will appear in the Records.

DISCUSSION OF RECOMMENDATIONS — PREAMBLE

Sir Cecil HURST (Chairman of the Jurists' Committee; speaking in French). — The Jurists' Committee desires to draw the attention of the Conference to the title which has been adopted for these recommendations. It seems to us that this title is not altogether accurate.

The Preamble lays down clearly that the text refers only to ports placed under an international regime, and that there is no question of an international regime for all ports. We did not venture to make this alteration, because when we informed the Committee of the fact, there was some opposition to such an alteration.

The PRESIDENT (speaking in French). — We might say : *recommendations relative to ports placed under an international regime*.

M. ORTUÑO (Spain; speaking in French). — Why not say *regime of international ports*, which would be shorter?

The PRESIDENT (speaking in French). — No, because it is the regime which is international, and not the ports. If there is no objection, the title will then be : *recommendations relative to ports placed under an international regime*.

This was decided.

I have to propose to you two or three slight alterations of form. After the words, in the French text, *recommende* pendant the word *que* should be transferred to the next line.

M. POLITIS (Greece; speaking in French). — It was decided this morning to use the words *the consent of the State or States*.

Sir Cecil HURST (Chairman of the Jurists' Committee; speaking in French). — That is quite true; this morning the words *the consent of the State or States under whose sovereignty or authority the said port is situated* were added to the last sentence of the Preamble. There are in the whole world only two ports placed under a condominium, and the jurists were of opinion that in this case the singular includes the plural and that no alteration was necessary.

The PRESIDENT (speaking in French). — That is true for legal texts. The text of the Preamble will therefore read as follows :—

The General Conference on Freedom of Communications and Transit, while considering that the moment has not yet arrived for the conclusion of a General International Convention on the Regime of Ports, is nevertheless of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international regime; it being well understood that such a regime can only be applied in consequence of a special act involving the consent of the State or States under whose sovereignty or authority the said port is situated.

The Preamble was adopted.

ARTICLE 1

The PRESIDENT (speaking in French). — We now pass to Article 1 of Chapter I : *General Provisions.*

The nationals, property and flags of all nations shall enjoy complete freedom in the use of the port. They shall be treated in this connection and in all respects on a footing of absolute equality, particularly as regards berthing, loading and unloading, facilities and tonnage, harbour, pilotage, lighthouse, and quarantine dues, levied in the name and for the profit of the Government, public authorities, private individuals or companies, corporations or establishments of any kind. In particular, no distinction shall be made between the nationals, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions on the free use of the port other than those arising from stipulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such stipulations must be reasonable and uniform and must not impede traffic without good reason.

Article 1 was adopted.

ARTICLE 2

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or to expenditure incurred in the interests of the users of the port or its approaches. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8 and 11, all other dues and charges are prohibited.

Article 2 was adopted.

ARTICLE 3

In the absence of any special organisation for carrying out works of upkeep, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any danger or obstacle to navigation and to facilitate the operations of vessels in the port.

M. PIERRARD (Belgium; speaking in French). — Would it not be possible to add after the word *remove* the words *as quickly as possible*, as we did in the Convention on Navigable Waterways?

The PRESIDENT (speaking in French). — There is of course no objection. If there is no opposition we will add the words *as quickly as possible*.

This was decided.

M. NEUJEAN (Belgium; speaking in French). — Instead of *éloigner* it would be better to put *écarter* (1).

The PRESIDENT (speaking in French). — We will say :—*Écarter le plus rapidement possible tous les dangers ou obstacles à la navigation*; we mean here material obstacles such as sunken barges or sand blocking the channel.

I put to the vote Article 3 as amended.

Article 3 was adopted.

(1) No change in English text.

ARTICLE 4

The PRESIDENT (speaking in French). — I will now read Article 4.

The State under whose sovereignty or authority the port is situated may undertake all works calculated to facilitate the use of the port or of its approaches. It shall only be bound to suspend them if it is proved that they are calculated to prejudice the use of the port and of its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken as far as possible to avoid dangers or obstructions to navigation.

Here the word *obstructions* must be used.

M. LANKAS (Czecho-Slovakia; speaking in French). — This article has often been changed, and the first paragraph should be drafted differently. We should say :

The State under whose sovereignty or authority the port is placed may undertake all works for upkeep and improvement and shall be bound to suspend them only if it is proved that they are calculated to prejudice the use of the port.

We must not repeat the same thing in the first and second sentences of the article.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As this first sentence was drafted at the instance of the Portuguese Delegate, is this an opportune moment to reopen the matter?

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — The idea has been left intact; the works which facilitate the use of the port are works of upkeep and improvement.

M. CARACOSTEA (Roumania; speaking in French). — And what about dredging?

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — It is included under works of upkeep.

M. STIEVENARD (Belgium; speaking in French). — Upkeep has already been dealt with in Article 3.

The PRESIDENT (speaking in French). — That is not the same idea. The text must be redrafted as follows :—

The State under whose sovereignty or authority the port is situated may undertake all works for upkeep and improvement of the port or of its approaches. It shall be bound to suspend them only if it is proved that they are calculated to prejudice the use of the port and of its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken as far as possible to avoid dangers or obstructions to navigation.

M. MIDHAT FRASHERI (Albania; speaking in French). — The text here is contradictory; it speaks of works intended to facilitate the use of the port, and at the same time there will be no obligation to suspend **such works** unless it is proved that they are calculated to prejudice... The second sentence must be so worded that it will not be possible to undertake works calculated to prejudice the facilities for using the port, and no mention must be made of the **suspension of works**.

The CHAIRMAN (speaking in French). — M. Lankas' wording strengthens the Committee's text.

M. PIERRARD (Belgium; speaking in French). — Do the words *territorial defence* mean defence against an enemy, or the protection of land against inundation?

The PRESIDENT (speaking in French). — I have always taken it to mean territorial defence from the military point of view. Otherwise we should say :—from the point of view of protection of the soil, of the land or of the banks. I think we must keep the text of Article 4 as it is, and I now put it to the vote.

Article 4 was adopted.

ARTICLE 5

The PRESIDENT (speaking in French). — I will read Article 5.

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

Article 5 was adopted.

ARTICLE 6

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

M. BIGNAMI (Italy; speaking in French). — Have the legal advisers not considered that there may be discrepancies between Articles 6 and 16? Article 6 speaks of the competent jurisdiction of the State concerned, whereas Article 16 states that any dispute shall be brought before the Permanent Court of International Justice.

The PRESIDENT (speaking in French). — The questions are not the same.

Sir Cecil HURST (Great Britain). — The question was not examined by the Committee of Jurists at their meeting, but since the meeting conversations have taken place between the members of the Legal Section of the Secretariat and a member of the Committee. The former were not sure whether the fears expressed by M. Bignami might not be well-founded, but as far as I am concerned the difficulty does not exist. Article 6 deals with civil litigation, and also with infractions of regulations, whereas Article 16 deals with litigation between States concerning the interpretation or application of the present Recommendations. It is possible that there may be disputes between States with reference to some particular matter, but the case will then be brought before an International Court. There is, therefore, no discrepancy.

The PRESIDENT (speaking in French). — Are there any other comments on Article 6? I put it to the vote.

Article 6 was adopted.

ARTICLE 7

The PRESIDENT (speaking in French). — I will read Article 7.

The State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I wish to make a proposal with a view to enabling a unanimous conclusion to be reached on a question which otherwise will, I am afraid, divide the Conference, as it has already divided the Committee on Navigable Waterways. I propose to omit Article 7 and also Article 10, and to insert a New Article at the end of Chapter I, which would become Article 7. This article would read as follows :

The question of the regime to be applied to national maritime coasting trade is not dealt with in the present regulations.

If that meets the general views of the Conference, it will avoid the necessity for a long discussion on the merits of the question, in view of the position—which seems to

us a very serious if not a ridiculous one—to which the Waterways Committee was brought as a result of the amendment submitted to Article 10. At this late hour I have no wish to argue the question of merits, but I see great advantage in abolishing both the articles which refer to national maritime coasting trade; this would be in conformity with our general practice of not dealing with maritime navigation in the present Conference.

M. ADATCI (Vice-President; speaking in French). — I am very pleased with the proposal which has been made by the British Delegation. As Vice-President of the Conference and Chairman of the Committee on Navigable Waterways and Ports, I was greatly concerned with this question, which is a very important one, and which goes beyond the competence of the Barcelona Conference. I think the British proposal is a great improvement, and I ask the Conference to adopt it.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — In my capacity as a delegate, and not as Rapporteur, I second the British proposal, which has the support of the Vice-President. I also prefer no mention to be made of coasting trade, particularly after the discussion which took place within the Committee, and which showed that variant opinions were held.

M. MATSUDA (Japan; speaking in French). — We ourselves have actually made a proposal to omit Article 7, and the Japanese Delegation is therefore in complete agreement with the British Delegation.

The CHAIRMAN (speaking in French). — We will reserve this article and consider it later, with a view to deciding upon the final text.

ARTICLE 8

We now pass to Article 8, which forms Chapter II.

Recommendations applicable only to Zones which are not Free.

In the levying of any customs, local octroi or consumption duties or of any incidental charges imposed on imports or exports through a port which is subject to the international regime, no difference shall be made on account of the flag of the vessel effecting the transport, whether such flag is that of the State exercising sovereignty or authority over the port, or any other flag.

In the absence of special circumstances justifying an exception on account of economic needs, the customs must not be higher than those imposed at the other customs frontiers of the State concerned on imports or exports under the general legislation of the State. All facilities accorded by such State over other land or water routes or in other ports to imports and exports shall be equally accorded to imports and exports through the port subject to the international regime.

M. LAMAN DE VRIES (Netherlands; speaking in French). — I should like to add in the second paragraph, after the word *customs*, the words *consumption duties*.

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — The idea was simply to avoid discriminating between frontiers and ports as regards customs dues; mention is made of frontiers of the State. Moreover, the same provision was adopted in the Waterways Convention.

The PRESIDENT (speaking in French). — Are there any other observations on Article 8?

I will put it to the vote.

Article 8 was adopted.

ARTICLE 9

We now come to Chapter III : *Special recommendations relating to free zones.*
I will read Article 9 :—

The facilities granted for the erection or use of warehouses as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise and all other duties of every description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

Sir Hubert LLEWELLYN SMITH (Great Britain; speaking in French). — I have no comments to make on the text of Article 9. But as regards the title of Chapter III, and also of Chapter II, I should like to point out that we are dealing here with *provisions*, and I should like this term to be used instead of the word *recommendations*.

The PRESIDENT (speaking in French). — Then we shall use the term *provisions*. If there are no further observations on Article 9 I will put it to the vote.

Article 9 was adopted.

ARTICLE 10

I will read Article 10 :—

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is placed may, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

M. MATSUDA (Japan; speaking in French). — I wish to repeat in connection with Article 10 that I agree with the text of the New Article proposed by the Delegate of Great Britain on the subject of coasting trade.

The PRESIDENT (speaking in French). — In that case we should omit Articles 7 and 10, and substitute for them an article which would be inserted before Article 14, and would be drafted as follows :—

The present stipulations do not affect the regime to be applied to national maritime coasting trade.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Today for the first time we have raised in plenary meeting the question of the omission of these two articles. Never during the course of our long discussion at Paris were we ever told that the question of maritime coasting trade would have to be excluded from the Resolution. Indeed, if I remember aright, the adoption of these two Articles, 7 and 10, was strongly urged. They were again discussed in Sub-Committee, and we were given excellent reasons justifying their adoption. When put to the vote in Sub-Committee, Article 10 was adopted by a majority, by the very delegates who are now, on the same day, proposing to omit it. At the meeting of the Committee which took place this afternoon, the question was again discussed, and this time the opposite result was produced; Article 10 was adopted in spite of the opinion of the previous majority of the Committee.

Today a new proposal arises; we are to omit the two articles because they affect the question of national coasting trade. That is a very difficult question. I will not dwell upon it at this late hour, but I should like to know why it is now proposed to omit these articles, and I ask those delegates who maintain that this omission is necessary to inform me of their reasons. I take this occasion to state very clearly that I will argue this question of national coasting trade and the proposed omission again when we consider international waterways.

The PRESIDENT (speaking in French). — What is your proposal?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I simply asked the reasons for which it is proposed to omit Articles 7 and 10. We should like to know why this question of coasting trade, after having been introduced in respect of waterways, has now to be excluded as regards ports. We consider that these changes, variations and discrepancies call for at least some explanation. The question is an important one, and as it is 9 o'clock in the evening I will ask the President to be good enough to postpone the continuation of the discussion until tomorrow.

The meeting adjourned at 9 p.m.

TWENTY-SEVENTH MEETING OF THE CONFERENCE

(Saturday, April 16th, 1921, at 6.15 p.m.)

DISCUSSION OF RECOMMENDATIONS (contd.) — ADOPTION AS A WHOLE, BY ROLL-CALL, OF
RECOMMENDATIONS RELATIVE TO PORTS PLACED UNDER AN INTERNATIONAL REGIME

The meeting opened with M. Hanotaux, President, in the Chair.

DISCUSSION OF RECOMMENDATIONS (contd.)

The PRESIDENT (speaking in French). — We will resume the discussion on the regime relative to ports. We were held up yesterday by Articles 7 and 10. It was proposed to substitute for these articles a new text, as follows :

The question of the regime to be applied to national maritime coasting trade is not included in the present Statute.

Does the Conference accept this text?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — At yesterday's meeting I begged the British Delegate to give us his reasons for asking for the omission of these two articles, which already exist in the *Green Book*. We discussed the subject at great length, both in Sub-Committee and in the Committee, which latter adopted the articles following an amendment by our Delegation. We cannot therefore agree to their omission without hearing detailed reasons. I therefore ask the British Delegate for an explanation, and reserve the right to speak after him.

Sir Hubert LLEWELLYN SMITH (Great Britain). — In response to the request of the Delegate of the Serb-Croat-Slovene State, I would explain that the British proposal to omit Articles 7 and 10 and substitute for them an article stating that maritime coasting trade is excluded from the present Recommendations, was made, as I thought I explained yesterday, as a compromise, in order to arrive at unanimity and so save the time of the Conference, in view of the sharp difference of opinion which arose in Committee as regards the wording of these two articles. The Serb-Croat-Slovene Delegate is perfectly right in saying that these articles appeared originally in the *Green Book*, but as originally drafted their effect was intelligible and consistent. The effect was that a port of international concern should be regarded as an ordinary territorial port to which the national laws governing coasting trade, whatever they might be, would be applied, with one exception,—referring to the free zone of the port, which was to be regarded for this purpose as extra-territorial, and therefore not subject to the coasting trade laws. But as the result of an amendment moved and carried in Committee, this rule with regard to the free zone was completely reversed; this led to a result which I think cannot be regarded as consistent with the main object of the recommendations regarding the establishment of free zones. This object is to create free distribution-centres where traffic of all kinds is facilitated, through the absence of the restrictions and delays caused by customs and other national legislation and administration. I think it is obvious that the whole object is defeated if the ships which bring goods to these distribution-centres are debarred from taking part in their distribution to other ports of the territorial State. That being so, it seemed to us that two courses were

open. We could either ask the Conference to reverse the decision of the Committee and re-establish the *Green Book* text, or else we could exclude the whole subject of maritime coasting trade from these recommendations. I fear that the first alternative would probably not be unanimously adopted, and it is for this reason that I propose the second. I hope that this explanation will give the Serb-Croat-Slovene Delegate the information which he requires.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The aim of the proposal which I submitted to the Committee, and which it adopted, was to defend our rights as regards coasting trade by basing ourselves on the authority of the League of Nations or on some other authority. You will notice that the text contains the word *may*, which implies possibility; this does not mean that an invariable rule is to be established.

After the explanation given by the British Delegate, I willingly agree to the omission of these two articles, if no objection is raised by the delegations which voted for our amendment.

M. FERNANDEZ Y MEDINA (Uruguay; Rapporteur, speaking in French). — The discussion which took place in Committee, and the ensuing vote, showed that there was a deep-seated divergence of views amongst the various delegations on the subject of maritime coasting trade in the free zones of ports placed under an international regime. It is for this reason that, like the Delegate of Great Britain, I think it would be better to omit the question from our Recommendations, and, without prejudging this part of the future regulations concerning free zones, to leave each State free to decide whether coasting trade shall be free or not. For my part (I was speaking as a delegate and not as Rapporteur) I stated from the outset that I was in favour of freedom of coasting trade. I consider that the idea of free zones is based on a regime of freedom, and I think that it is not possible to assimilate free zones to a part of the national territory, thus giving to the territorial State the right of excluding other countries, interested in the development of the free zone, from the international trade which is based on this very system of zones. I therefore consider that the question of maritime coasting trade must be omitted from our Recommendations, and I ask the Conference to take a decision in this sense.

The PRESIDENT (speaking in French). — I think that complete agreement has been reached; M. Avramovitch has given his assent, for which I thank him. It is understood then that Articles 7 and 10 will be omitted, and that the following New Article will be substituted for them :

The question of the regime to be applied to national maritime coasting trade is not included in the present Statute.

Has anyone any observations to make on this Article?

I put it to the vote.

The New Article replacing Articles 7 and 10 was adopted.

I will now read Article 9 (formerly 11).

ARTICLE 9 (formerly 11).

No duties or charges other than those referred to in Article 2 shall be levied on goods entering or leaving the free zone, whatever may be the foreign country from which they come or for which they are destined. A maximum statistical duty of 1 per mille *ad valorem* may, however, be imposed, which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic of the port.

Sir Cecil HURST (Chairman of Jurists' Committee; speaking in French). — The Jurists' Committee desires to point out to the Conference the confusion which might arise from the expression *relevé des mouvements du port*.

Does this refer merely to a record of vessels or to a record of the trade of the port? It would perhaps be preferable to substitute for the word *mouvement* the word *commerce*.

The jurists are unable to suggest a new word because they do not quite understand what was intended to be conveyed in the article, nor could they obtain any exact definition on the subject.

The PRESIDENT (speaking in French). — If we turn to the beginning of the article, which refers to goods entering or leaving the free zone, it would seem that what is meant here is goods. In French *mouvement* in ports is applied to vessels.

M. PIERRARD (Belgium; speaking in French). — Since at the end of the article mention is made of *ad valorem*, the reference is evidently to goods.

M. ORTUÑO (Spain; speaking in French). — In my opinion it would be simpler to say *le relevé du trafic du port*.

The PRESIDENT (speaking in French). — I think this is all the more desirable because the word *traffic* is used in English. I put the new Article 9 to the vote, with the changed text, *le relevé du trafic du port*.

The new Article 9 was adopted.

ARTICLES 10 TO 15

ARTICLE 10 (formerly 12).

The duties referred to in Article 7 (formerly 8) above may be levied under the conditions prescribed in the said Article upon goods despatched from the free zone at the time of their entry into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their leaving the territory of the State under whose sovereignty or authority the port is situated.

Article 10 was adopted.

ARTICLE 11 (formerly 13).

Persons, baggage and goods and also vessels, coaching and goods stock and other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State, if proceeding from or to the territory of any other State.

Article 11 was adopted.

The PRESIDENT (speaking in French). — We now come to Chapter IV : *Miscellaneous Provisions*. I will remind the Conference that the New Article substituted for the former Articles 7 and 10 should be placed under this heading.

M. FERNANDEZ Y MEDINA (Uruguay, Rapporteur; speaking in French). — This New Article could be placed between the Articles formerly numbered 14 and 15.

ARTICLE 12 (formerly 14).

These provisions do not prescribe the rights and duties of belligerents and neutrals in time of war. They shall, however, continue in force in time of war so far as such rights and duties permit.

Article 12 was adopted.

ARTICLE 13 (formerly 7 and 10).

The question of the regime to be applied to national maritime coasting trade is not included in the present Statute.

The PRESIDENT (speaking in French). — This Article has already been adopted.

ARTICLE 14 (*formerly 15*).

These provisions do not impose any obligations conflicting with the rights and duties of a State as Member of the League of Nations.

Article 14 was adopted.

ARTICLE 15 (*formerly 16*).

Any dispute between States as to the interpretation or application of these provisions which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order, however, that such disputes should be settled in a friendly way as far as possible, they shall, before resort is made to any judicial proceedings, and without prejudice to the powers and right of action of the Council and of the Assembly, be submitted for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communication and transit. In urgent cases a preliminary opinion may be given recommending temporary measures intended in particular to restore the facilities for the free use of the post which existed before the act or occurrence which gave rise to the dispute.

Article 15 was adopted.

The PRESIDENT (speaking in French). — The Recommendations relative to Ports placed under an International Regime have now been voted article by article. We will now take a vote by roll-call on the Recommendations as a whole.

M. SIBILLE (France; speaking in French). — I have asked to speak in order to explain the reason for my vote. The Recommendations adopted by this Conference ought to be adopted by a large majority, if possible unanimously. I will therefore vote in favour of the Recommendations relative to Ports placed under an International Regime, but I wish to state that I only vote subject to the reservation contained at the beginning of the Preamble, which says... *while considering that the moment has not yet arrived for the conclusion of a General International Convention on the Regime of Ports*. I wish to state that I vote for these Recommendations subject to this reservation.

**ADOPTION AS A WHOLE, BY ROLL-CALL, OF RECOMMENDATIONS RELATIVE
TO PORTS PLACED UNDER AN INTERNATIONAL REGIME**

The PRESIDENT (speaking in French). — I now put to the vote, by roll-call, the Recommendations as a whole.

Albania	Yes	Finland	Yes
Austria	Yes	France	Yes
Belgium	Yes	Great Britain	Yes
Bolivia	Yes	Greece	Yes
Brazil	Yes	Guatemala	Yes
Bulgaria	Yes	Haiti	Yes
Chile	Yes	Honduras	Yes
China	Yes	India	Yes
Colombia	Absent	Italy	Yes
Cuba	Yes	Japan	Yes
Czecho-Slovakia	Yes	Latvia	Yes
Denmark	Yes	Lithuania	Yes
Esthonia	Yes	Luxemburg	Absent

Netherlands	Yes	Roumania.	Yes
Norway.	Yes	Serbia	Abstention
Panama.	Yes	Spain.	Yes
Paraguay	Absent	Sweden.	Yes
Persia	Yes	Switzerland	Yes
Poland	No	Uruguay	Yes
Portugal	Yes	Venezuela.	Absent

The Recommendations relative to Ports placed under an International Regime were adopted as a whole by 34 votes to 1, with 1 abstention.

The meeting adjourned at 7 p.m.

PART V

TEXTS RELATING TO RAILWAYS AND PORTS

RAILWAYS

SECTIONS I, II AND III. — Texts discussed at the Commission of Enquiry on Freedom of Communications and Transit.

SECTION IV. — Text prepared by the Commission of Enquiry and submitted to the General Conference on Communications and Transit, with attached Report (*Green Book*).

SECTIONS V AND VI. — Texts discussed at the Barcelona Conference.

SECTION VII. — Text of *Recommendations relative to the International Regime of Railways* adopted by the Conference.

PORTS

SECTIONS VIII AND IX. — Texts discussed at the Commission of Enquiry on Freedom of Communications and Transit.

SECTION X. — Text prepared by the Commission of Enquiry and submitted to the General Conference on Communications and Transit, with attached Report (*Green Book*).

SECTIONS XI AND XII. — Texts discussed at the Barcelona Conference.

SECTION XIII. — Text of the *Resolution relative to the International Regime of Ports*, adopted by the Conference.

SECTION I

DRAFT CONVENTION

ON THE INTERNATIONAL REGIME OF RAILWAYS

(Presented by the Secretary-General as a basis for discussion.)

(October 1919.)

ARTICLE 1

On the territories of all States which adhere to the Conventions referred to in the present article, the transport of goods between any two points on lines open to general traffic within any one of these States shall be carried out with a single way-bill, if this can be done throughout over routes subject to the same obligation.

There shall be a special Convention to determine the conditions under which this transport shall take place, particularly as regards the through forwarding of goods, and transshipment when this operation is unavoidable.

There shall also be a special Convention to determine the measures necessary to assure the international transport of passengers and luggage over the same lines, under conditions of speed and comfort corresponding to the importance of each train service.

There shall be a special Convention to determine conditions of transport for goods, passengers and luggage, with a uniform consignment note for journeys comprising one or more sections by rail and one or more by sea served by one or more shipping lines designated by each State to participate in through combined transport.

These Conventions shall involve complete equality of charges for goods and passengers proceeding on the same journey in the same conditions, whatever their nationality, so that the benefits of any private agreement authorised by the legislation of a State shall be granted to whoever accepts the conditions of such agreement.

ARTICLE 2

It shall be the duty of the Permanent Communication and Transit Committee of the League of Nations :

1) To prepare the international agreements referred to in the preceding article, as also any modification of these agreements, the necessity for which may become apparent;

2) To apprise all the Parties to these agreements of any modifications in the list of those railway and shipping lines which are subject to them, and also of any difficulties by which traffic on any of such lines may be temporarily impeded;

3) To conciliate or settle any disputes arising between the administrative bodies which are parties to these agreements, on the subject of the application of their terms.

Whenever the Conventions referred to in the preceding Article involve the creation of International Bureaux, these shall be placed under the direction of the Permanent Communications and Transit Committee, which may delegate to them all or part of the above-mentioned functions.

ARTICLE 3

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties recognise as highly desirable the establishment, over the railways placed under their sovereignty or authority, of international tariffs which will facilitate international traffic as far as possible, both by their rates and the method of their application. The Permanent Communications and Transit Committee shall have the power to bring any proposals to this end to the notice of any one of the High Contracting Parties.

ARTICLE 4

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties recognise as highly desirable the establishment, over the railways in the territories placed under their sovereignty or authority, of such services with through booking facilities for passengers and their luggage as may be called for by any one of the other High Contracting Parties, in order to assure railway communications between that Power and another High Contracting Party. The Permanent Communications and Transit Committee shall have the power to bring any proposals to this end to the notice of any one of the High Contracting Parties.

ARTICLE 5

The High Contracting Parties recognise as highly desirable all measures of a technical nature which will facilitate, over the railways in the territories placed under the sovereignty or authority of any one of the High Contracting Parties, the use of the rolling-stock of adjacent High Contracting Parties. The Permanent Communications and Transit Committee shall have the power to bring any proposals to this end to the notice of any one of the High Contracting Parties.

ARTICLE 6

When a State is unwilling to execute the works or take the measures necessary for the proper carrying out on its territory of an international service, basing its claim on the fact that the cost is disproportionate to the amount of its interest in such service, the Permanent Communications and Transit Committee of the League of Nations may, at the request of any one of the States concerned, examine the question of the equitable distribution of the cost between these States, and study means of meeting it.

Any State refusing to bear the cost may not oppose the carrying out of the works or measures in question, if the Permanent Communications and Transit Committee recognises the necessity, and if the other States concerned undertake to bear the whole of the cost, including the making good of all damages occasioned by the works.

ARTICLE 7

In the absence of any direct agreement between the parties concerned, all disputes as to the interpretation and application of the present Convention shall be brought before the Permanent Communications and Transit Committee, and, in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations dated ... and in the Scheme for the Organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on ...

These disputes shall, in cases of urgency, be accorded an accelerated procedure, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final opinion and judgment on the basic cause of dispute, of pronouncing a provisional opinion and judgment to the extent of prescribing any provisional measures designed in particular for the utilisation of railways, and to restore the facilities which existed before the act or occurrence which gave rise to the dispute. The present article does not prevent the settlement of disputes by arbitration or any other means, in virtue of special Conventions between the States concerned.

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

SECTION II

DRAFT CONVENTION

ON THE INTERNATIONAL REGIME OF RAILWAYS

(Presented by the Secretary-General for discussion in second reading.)

(June 3rd, 1920.)

PREAMBLE

The High Contracting Parties, being desirous of applying the principle of freedom of communications, in conformity with Article 23 of the Covenant, to the railways under their sovereignty or authority, and recognising that in virtue of this principle any one of the High Contracting Parties is entitled, on the railways under the sovereignty or authority of any other High Contracting Party, to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, are agreed upon the following provisions to this end.

ARTICLE 1

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures, more particularly as regards through forwarding, transshipment when this operation is unavoidable, and the establishment, rates and method of application of tariffs which will facilitate as far as possible the international transport of goods, mails and postal parcels, and wagons, over the railways placed under their sovereignty or authority.

ARTICLE 2

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures, comprising in particular the establishment of services with through booking facilities, which will facilitate the international transport of passengers and luggage over the railways placed under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service.

ARTICLE 3

The High Contracting Parties undertake to recognise as highly desirable the adoption, over the railways placed under the sovereignty or authority of any one of the High Contracting Parties, of all measures of a technical nature, which will facilitate the utilisation of the rolling-stock of adjacent High Contracting Parties.

ARTICLE 4

In the absence of relevant existing conventions, special Conventions shall provide for the application of the principles enunciated in the preceding articles. These Conventions shall include as far as possible provisions applicable to combined transport

by rail and water, including sea-journeys. They shall comprise no distinction whatever, in connection with facilities or tariffs, between goods or passengers proceeding on the same journey, and in the same conditions, based on the nationality of persons or on the commercial origin or ownership of goods, so that the benefits of any private agreement authorised by the legislation of a State shall be granted to whoever accepts the conditions of such agreement. Nevertheless, as regards passengers, this stipulation must not be construed as allowing the subjects of one of the High Contracting Parties to claim the benefit of special privileges accorded by another High Contracting Party to certain classes only of its own subjects over the railways placed under its sovereignty or authority.

ARTICLE 5

In the absence of existing Conventions, and until such time as the conventions referred to in Article 4 have been concluded, the principle of equality defined in the aforementioned shall be considered as immediately binding upon each of the High Contracting Parties.

ARTICLE 6

In those cases in which conventions, referred to in Article 4, involve the creation of international bureaux, these bureaux shall, in conformity with Article 24 of the Covenant, exchange directly with the Permanent Communications and Transit Committee any useful information relating to the exercise of their functions, and submit an annual report to the League of Nations.

ARTICLE 7

All disputes between States as to the interpretation and application of the conventions referred to in Article 4, shall, in the absence of any special procedure laid down in the present Conventions, be brought before the Permanent Communications and Transit Committee, and, in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations dated ... and in the Scheme for the Organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on ...

ARTICLE 8

When one of the High Contracting Parties is unwilling to execute works necessary for the proper carrying out of an international railway transport service on the territory placed under its sovereignty or authority basing its claim on the fact that the cost is disproportionate to the amount of its interest in such service, the Permanent Communications and Transit Committee, may, at the request of any one of the States concerned examine the question of the equitable distribution of the cost between the said States, and propose means of meeting it.

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

SECTION III

DRAFT CONVENTION

ON THE INTERNATIONAL REGIME OF RAILWAYS

(Presented by the Secretary-General for discussion in third reading.)

(June 9th, 1920.)

PREAMBLE

The High Contracting Parties, being desirous of applying the principle of freedom of communications, in conformity with Article 23 of the Covenant, to the railways under their sovereignty or authority, and recognising that in virtue of this principle any one of the High Contracting Parties is entitled, on the railways under the sovereignty or authority of any other High Contracting Party, to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, are agreed upon the following provisions to this end :

ARTICLE 1

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods, mails and postal parcels, over the railways placed under their sovereignty or authority, more particularly as regards the through transport of goods whenever possible by a single waybill, their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of tariffs, their rates and the method of their application.

ARTICLE 2

Without prejudice to the provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage over the lines placed under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage.

ARTICLE 3

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

ARTICLE 4

In the absence of relevant existing conventions, special conventions shall provide for the application of the principles enunciated in the preceding articles. These

Conventions shall include as far as possible provisions applicable to combined transport by rail and water, including sea-journeys. They shall in particular contain stipulations expressly forbidding the concession of facilities or the establishment of tariffs, the adoption or application of which, as regards passengers subjects of any one of the High Contracting Parties, or goods, mails or postal parcels, coming from or proceeding to any one of the High Contracting Parties, over the same throughout route, in the same direction, and in the same conditions, would depend upon the nationality of passengers, upon the ownership or commercial origin of goods, mails or postal parcels or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. This stipulation, however, must not be construed as preventing the establishment of local tariffs on a different basis from import and export tariffs.

The afore-mentioned Conventions shall also provide that transport rates be calculated in accordance with the tariffs legally in force and duly published, and that any private agreement having as its object the granting of rebates to one or more consignors of goods or mails and postal parcels, subjects of any one of the High Contracting Parties, shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

ARTICLE 5

In the absence of existing Conventions, and until such time as the Conventions referred to in Article 4 have been concluded, the provisions defined in the afore-mentioned article shall be considered as binding upon each of the High Contracting Parties as from the coming into force of the present Convention.

ARTICLE 6

In those cases in which (existing or) future Conventions, referred to in Article 4, involve the creation of International Bureaux, these bureaux shall, in conformity with Article 24 of the Covenant, exchange directly with the Permanent Communications and Transit Committee any useful information relating to the exercise of their functions, and submit an annual report to the League of Nations.

ARTICLE 7

In the absence of any direct agreement between the parties concerned, all disputes between States as to the interpretation and application of the existing or future Conventions referred to in Article 4, and for the settlement of which special procedure is not laid down in these Conventions, shall be brought before the Permanent Communications and Transit Committee, and, in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations dated ... and in the Scheme for the Organisation of the General Communications and Transit Conference, and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on ...

These disputes shall, in cases of urgency, be accorded as accelerated procedure, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final opinion and judgment on the basic cause of dispute, of pronouncing a provisional opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore the facilities for the utilisation of railways which existed before the act or occurrence which gave rise to the dispute. The same procedure shall be followed in all disputes between States as to the interpretation or application of Article 5 of the present Convention.

SECTION IV

DRAFT CONVENTION

ON THE INTERNATIONAL REGIME OF RAILWAYS

(Text prepared by the Commission of Enquiry and submitted to the Conference.)

The General Communications and Transit Conference of the League of Nations,
Assembled at... by...

Having decided to adopt certain proposals relating to the International Regime
of Railways, constituting the... item of their agenda, and

Having decided that these proposals should be drawn up in the form of a draft
international convention,

Adopts the following Draft Convention with a view to its ratification by the Mem-
bers of the League of Nations, as also by such other Powers to whom it may have been
officially communicated by the Council of the League of Nations; those among the said
Members and Powers who ratify the present Draft Convention being known hereafter
as High Contracting Parties.

PREAMBLE

Principles of the Convention.

The High Contracting Parties being desirous of applying the principle of Freedom
of Communications, in conformity with Article 23 (e) of the Covenant of the League of
Nations, to the railways under their sovereignty or authority, and recognising that in
virtue of this principle any one of the High Contracting Parties is entitled, on the rail-
ways under the sovereignty or authority of any other High Contracting Party, to all
reasonable facilities for promoting and encouraging the flow of international traffi to
or from its territory, are agreed upon the following provisions to this end :

ARTICLE 1

Treatment of Goods, Mails and Postal Parcels.

Without prejudice to the provisions of the Convention on Freedom of Transit, the
High Contracting Parties agree to recognise as highly desirable the adoption of all
measures which will facilitate the international transport of goods, mails and postal
parcels, over the railways placed under their sovereignty or authority, more particu-
larly as regards the through transport of goods whenever possible by a single waybill,
their treatment during the journey, transhipment when this operation is unavoidable,
and the establishment of tariffs, their rates and the method of their application.

ARTICLE 2

Treatment of Passengers.

Without prejudice to the provisions of the Convention on Freedom of Transit, the
High Contracting Parties agree to recognise as highly desirable the adoption of all
measures which will facilitate the international transport of passengers and luggage

over the lines placed under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage.

ARTICLE 3

Rolling-stock.

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

ARTICLE 4

Special Conventions.

In the absence of relevant existing conventions, special conventions shall provide for the application of the principles enunciated in the preceding articles. These conventions shall include as far as possible provisions applicable to combined transport by rail and water, including sea journeys. They shall in particular contain stipulations expressly forbidding the concession of facilities or the establishment of tariffs, the adoption or application of which, as regards passengers subjects of any one of the High Contracting Parties, or goods, mails or postal parcels, coming from or proceeding to any one of the High Contracting Parties, over the same throughout route, in the same direction, and in the same conditions, would depend upon the nationality of passengers, upon the ownership or commercial origin of goods, mails or postal parcels or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. This stipulation, however, must not be construed as either preventing the establishment of local tariffs on a different basis from import and export tariffs, or as affecting in any way the question of combined rail and sea tariffs.

The aforementioned conventions shall also provide that transport rates be calculated in accordance with the tariffs legally in force and duly published, and that any private agreement having as its object the granting of rebates to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

ARTICLE 5

Provisions immediately compulsory.

In the absence of existing conventions, and until such time as the conventions referred to in Article 4 have been concluded, the provisions defined in the aforementioned article shall be considered as binding upon each of the High Contracting Parties as from the coming into force of the present Convention.

ARTICLE 6

Relations between the Permanent Committee and the International Bureaux.

In those cases in which [existing or] (1) future conventions, referred to in Article 4, involve the creation of International Bureaux, these bureaux shall, in conformity with Article 24 of the Covenant, exchange directly with the Permanent Communications and Transit Committee any useful information relating to the exercise of their functions, and submit an annual report to the League of Nations.

(1) The Conference is recommended to include the words in brackets, with a view to obtaining the consent of the Parties, through the medium of this convention, in cases where this is necessitated by the terms of Article 24 of the Covenant.

ARTICLE 7

Application of the Conventions in Time of War.

The stipulations contained both in the present Convention and in the conventions referred to in Article 4 shall be valid in time of war, in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

ARTICLE 8

Relationship of the present obligations to the other obligations of the Members of the League of Nations.

Neither the present Convention nor the conventions referred to in Article 4 are to be understood as imposing on any of the High Contracting Parties any obligation which would conflict with its rights and obligations as a Member of the League of Nations.

ARTICLE 9

Relations with States not adhering to the present Convention.

Each of the High Contracting Parties undertakes not to accord to a State which does not adhere to the present Convention any preference, either by agreement or understanding, with regard to the utilisation of railways, which would be contrary to the terms of Articles 4 and 5 as between High Contracting Parties.

ARTICLE 10

Relationship of the present Convention to the Peace Treaties.

The present Convention does not prejudice the application of the Treaties of Versailles, Saint-Germain, Neuilly, etc. between the Powers signatory to those Treaties.

ARTICLE 11

Disputes.

In the absence of any direct agreement between the parties concerned, all disputes between States as to the interpretation and application of the existing or future conventions referred to in Article 4, and for the settlement of which special procedure is not laid down in the conventions, shall be brought before the Permanent Communications and Transit Committee; and, in case of appeal within such period as may be prescribed, before the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations, dated..., and in the Scheme for the Organisation of the General Communications and Transit Conference, and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on...

These disputes shall, in cases of urgency, be accorded an accelerated procedure, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final opinion and judgment on the basic cause of dispute, of pronouncing a provisional opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore the facilities for the utilisation of railways which existed before the act or occurrence which gave rise to the dispute.

The same procedure shall be followed in all disputes between States as to the interpretation or application of Articles 5 and 9 of the present Convention.

ARTICLE 12

Consequences of Non-execution.

Should any one of the High Contracting Parties fail to comply with the findings of the Permanent Communications and Transit Committee, or, if an appeal has been made, with the judgment of the Permanent Court of International Justice, any High Contracting Party may bring the matter before the Permanent Court of International Justice in order to obtain from it a declaration as to the measures which each of the High Contracting Parties may be entitled to take.

ARTICLE 13

Ratification.

The Secretary-General of the League of Nations shall transmit a certified copy of the present Draft Convention to each Member of the League of Nations, as well as to each Power to which the Council of the League of Nations may decide that the present Draft Convention should be officially communicated.

The Secretary-General of the League of Nations shall be notified of the ratifications of the present Convention, and shall register them.

ARTICLE 14

Notification.

As soon as the ratifications of three of the Members or Powers referred to in the preceding Article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or Powers referred to in the preceding Article.

ARTICLE 15

Coming into force of the Convention.

The present Convention shall come into force on the thirtieth day after the date on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat, or have already contracted to adhere thereto. Thereafter, this Convention will come into force for any other Member or Power on the thirtieth day after the date on which the ratification of that Member or Power is registered with the Secretariat.

ARTICLE 16

Date of Application of the Convention.

Each Member which ratifies this Convention agrees to bring its provisions into operation not later than 1st July, 1922, and to take such action as may be necessary to make those provisions effective.

Each Power which ratifies this Convention after having received communication from the Council of the League of Nations, agrees to bring its provisions into operation not later than 18 months after the date of the said communication, and to take such action as may be necessary to make those provisions effective.

ARTICLE 17

Denunciation.

Any Member or Power which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention comes into force,

by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 18

Revision.

At least once in ten years the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 19

Official Texts

The French and English texts of this Convention shall both be authentic.

ANNEX TO SECTION IV

REPORT ON THE DRAFT CONVENTION ON THE INTERNATIONAL REGIME OF RAILWAYS ⁽¹⁾

The Draft Convention on Freedom of Transit already deals with certain questions which affect, especially in such matters as the charges to be levied, the method of utilising and working, and in general, the international regime of railways. But from the nature of that Convention it can only deal with such questions indirectly, without entering into the details of execution which concern any particular method of transport such as railways or navigation, and moreover, can only envisage them from the point of view of the needs of transit, without, therefore, taking account of transports other than those in transit.

Freedom of Communications, however, as understood in Article 23 (e) of the Covenant, is not confined to Freedom of Transit. If, therefore, the first General Communications Conference is resolved from the outset to define the duties incumbent upon the Members of the League in virtue of this principle of freedom of communications, it cannot omit to deal specially with the problem of international railway communications, at any rate in its broad lines. Freedom of Transit itself would be meaningless if, after having been afforded legal guarantees on those railways over which the various States exercise any degree of control or action, it could not be effectively exercised owing to the general conditions of working and utilisation of these lines. Moreover, apart from the question of transit, the economic solidarity of nations, which to-day is more necessary than ever before, requires that every State should find on the railways of other States those facilities which are essential to its continued existence.

Such are the principles inspiring the Draft Convention on the International Regime of Railways, which was adopted unanimously by the Commission of Enquiry on Freedom of Communications and Transit, with a view to its submission to the General

(1) This Report forms part of the preliminary documents for the General Communications and the Transit Conference (*Green Book*).

Conference. In its pages are contained the elements of the line of action to be followed with regard to railways by the general communications organisation of the League of Nations, and of the new and specialised code gradually to be built up as a result of progressive understanding between States, and of that slow but sure fusion of their *inter se* agreements, which is so eminently desirable.

It has not been considered possible to go further. The conditions of working and utilisation of railways in different countries at the present time vary so enormously, both from an economic and a technical point of view, and are so intimately bound up, in many different ways, with the interior administration and the commercial organisation of different countries, that any immediate attempt at codifying in universal form and without regard to the need for gradual transition, the obligations which in this domain are suggested to every country by the new spirit of international collaboration animating the Covenant, must needs be premature and in all probability end in disappointment. The General Convention only gives guiding principles; it voices the common aim, whilst leaving to the special conventions to be concluded either between the various States themselves or between the railway companies of different countries, whichever may be the more convenient procedure, the task of achieving that aim, with due regard in every case to particular circumstances and to different local conditions. Doubtless, the earlier conventions will only be applicable to certain clearly defined geographical areas, but it is not unlikely that through force of circumstances they may gradually tend to be combined, with the result that out of tentative beginnings there will ultimately be developed an equivalent to General Conventions such as could not have been realised in their complete form at the outset.

But the present Draft Convention has not contented itself with providing for future special conventions and laying down the principles they are to contain; it has contributed the necessary framework by placing at the disposal of the Parties a general organisation, under the auspices of the League of Nations, which is intended to smooth the way for the drawing up of the agreements in question and to follow up their application. The mere fact of their constituting annexes, as it were, to the present Convention, links them up with the general programme imposed by Article 23 (e) of the Covenant, and, if desired by the Contracting Parties, the same procedure may be used for preparing and concluding them as that adopted for the General Conventions, through the instrumentality of the Permanent Committee and the General Conference, either in plenary or in partial session, without such a procedure being considered in any way as compulsory. In any case, the provisions which are similar to those contained in the other Conventions, and which concern the settlement of disputes, revision, denunciation, time of war, etc., will assure for the execution of the Draft Convention on the international Regime of Railways, and of its virtual annexes the special conventions, the same guarantees as are afforded to the Conventions on Freedom of Transit and on the International Regime of Waterways. These provisions apply automatically to the future special conventions with the same force as to the General Convention itself, and, consequently, there will be no need for them to be repeated in each of the special conventions. It is hardly necessary to emphasise the importance of this arrangement, whereby every dispute between States relative to the interpretation or application of these conventions is to be submitted to compulsory arbitration.

In cases where there already exist between certain States special conventions similar to those provided for above, the *status quo* is to be maintained, and the relations between these previous agreements and both the General Convention and the central organisation of the League of Nations are to be considered as identical with those outlined above. The League of Nations will not succeed in its mission by making a clean sweep of all that has gone before, but only, on the contrary, by setting its seal upon every effort which has already been made towards the cause of international co-operation and the achievement of the task now set before the League. It should lend its support to the maintenance, in their integrity, both as regards their methods and their field of activity, of any existing organisations of proven worth, such as that created by the Convention of Berne of 14th October, 1890. In these cases it is only proposed that the relations provided for in Article 24 of the Covenant should exist between such bodies and the League of Nations in such a way as to leave entirely free their interior working.

Lastly, there is one point in connection with which certain definite obligations are established by the present Draft General Convention before the coming into force of the special conventions. It has been considered feasible and desirable to prohibit at once by international law all differential treatment and "unjust preferences" based on the nationality of passengers, the origin (1) of goods, the flag of vessels, etc., such as have already been gradually abolished by the internal legislation of the majority of countries, in the course of the evolution of railway practice. All railway tariffs of which the application would entail such differential treatment are considered as incompatible with the principle of Freedom of Communications which by the terms of Article 23 (e) of the Covenant is accorded without distinction to all. The same article of the Convention also reproduces a clause of the Berne Convention as to the prohibition of all private agreements outside of the scheduled tariffs, subject to rebates which may be granted provided they are duly published and equally applicable to all under the same terms and conditions; it applies thus generally the safeguards hitherto only in force within the territories of the Contracting Parties to the Berne Convention. It should be noted that the subject of combined rail and sea tariffs is entirely omitted from the Convention.

As stated above, the Draft Convention on the International Regime of Railways was adopted unanimously without reservation upon any point. In the course of discussion prominence was given to the connection between general railway practice on the one hand, and the economic and railway policy of different States on the other, without, however, affecting the points agreed to for inclusion in the body of the Convention. A summary of these discussions may be of interest to the Conference, particularly inasmuch as they reveal certain points of view corresponding to those put forward in connection with Article 4 of the Convention on Freedom of Transit.

The Italian delegation declared its opposition to any formula which in their opinion would imply the strict prohibition both of any distinction between interior railway tariffs and international tariffs, and also of any protection afforded to national industries by means of railway tariff facilities. This delegation considered, firstly, that it was not within the competence of a technical Conference to express an opinion, even in the form of a recommendation only, on a question which concerned the general policy of the different States; and secondly, as touching the principle, that if, on the one hand, Italy had always accorded and would continue to accord to international traffic the use of the ordinary interior tariffs of the country, and even of reduced transit tariffs, yet, on the other hand, as a result of its geographical configuration and situation, Italy had been obliged to come to the assistance of certain industries by means of reduced railway tariffs, as being the method least open to abuse; the transport of Sicilian and South Italian fruit and "earlies" to the northern frontiers enjoyed the use of such tariffs, which are maintained below the actual cost of transport.

The Rumanian delegation, supported by the Serb-Croat-Slovene and Polish delegations, declared itself in agreement with the views expressed by the Italian delegation, and laid emphasis on the importance of this point for the new States. It agreed that no distinction should be made dependent upon the starting-point and nationality of passengers and goods, provided that there resulted no interference with the free development of the industries and interior trade of the country in which the transport was effected. Every country should be at liberty to fix its import and export tariffs, thus affording the necessary protection for its home interests. By no other means was it possible for the small newly created States, in which railways and navigation were State services established at the cost of the taxpayer, and not concessions to joint stock companies, to create home industries and develop their trade untrammelled by foreign competition. According to this delegation, the intention of Article 23 (e) of the Covenant was precisely this emancipation and development of every country, including the smaller States, by proclaiming, side by side with the principle of freedom of transit, that of equitable treatment for commerce.

The French delegation, which was supported by the Belgian, British, Dutch, Greek, Japanese, Portuguese and Spanish delegations, replied recalling its opinion that the policy of protection or of free trade between States ought to be carried out exclusively by means of customs tariffs and direct subsidies, and not by means of transport tariffs.

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 287.

The sole result of the latter practice, which must be clearly distinguished from the usual differences between import, export and transit tariffs on purely commercial grounds, would be to interfere with the natural working of transport undertakings, to vitiate indirectly customs regimes, and to disturb the application of commercial treaties.

The Belgian delegation added that in its view considerable advantages would have been obtained by basing the railway convention upon a definite undertaking by every country to purge its railway policy of all protectionist factors, while allowing full liberty of commercial competition between various lines.

The Czecho-Slovak delegation, whilst adhering to the principles and point of view expressed by the French, etc. delegations, considered that, in face of the present period of transition, the reservations formulated by the Italian delegation were indispensable.

The Commission recognised that the question was not one which for the present could be usefully dealt with in a General Convention put forward for immediate adoption. It was persuaded that the different opinions expressed would tend gradually in the future to coincide, and that the international organisation set up for dealing with communications would little by little, as it came into play, tend to lessen differences now existing between the various States as regards both their theories and their actual policies. In this belief, the Commission decided merely to take official note of the various attitudes and to transmit them quite impartially to the permanent Organisation of the League of Nations.

Finally, the Commission decided to bring to the notice of the General Conference a proposal put forward by the British delegation in connection with the discussion of the Railway Convention. This proposal, which was regarded by the British delegation as an extension to Article 4 of the Draft, relates to combined rail and sea tariffs. Time was lacking at the meetings to embark upon the study of the proposed text, of which, however, a copy is here given for purposes of information :

“On the same route, in the same direction, between the same points, and in the same conditions of traffic, the railway portion of any combined tariff shall always be the same, whatever the flag or ownership of the vessel which has been or is to be employed for conveying the traffic.”

A Draft Resolution upon railways was likewise put forward by the Greek delegation. It included, in addition to the provisions and general principles contained in the Draft Convention under discussion, certain detailed provisions of a practical and, in some cases, of a merely transitory character, intended to serve as a sort of standard regulations for the use of railway administrations establishing services of international concern.

The Czecho-Slovak delegation, after making a statement on the existing condition of affairs with regard to international traffic, seconded the Greek proposal. They joined in the view that it would be preferable for the Convention, which would in all probability eventually take the place of certain provisions in the Treaties of Peace, to contain more detailed clauses concerning, in particular, the enlargement of the sphere of the Berne Convention, the unification of internal carrier's law, the conclusion of agreements as to exchange of rolling-stock, and the standardisation of the structure of tariffs.

The Commission considered that this special draft contained certain detailed provisions which could not be applied universally and which, moreover, prejudiced in advance the measures to be laid down at the time of the drawing up of special conventions in the future. It accordingly decided to append the text of the proposal to its Minutes, and to communicate it, if a suitable occasion arose, to the States and bodies concerned.

SECTION V

DRAFT CONVENTION ON THE INTERNATIONAL REGIME OF RAILWAYS

(Text prepared at Barcelona by the Committee on Railways.)

PREAMBLE

(Text of Preamble Reserved.)

ARTICLE 1

Without prejudice to the Provisions of the Convention on Freedom of Transit, the High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of goods over the railways placed under their sovereignty or authority, more particularly as regards the through transport of goods whenever possible by a single waybill, subject to the same obligation, their treatment during the journey, transhipment when this operation is unavoidable, and the establishment of international tariffs and the method of their application.

ARTICLE 2

The High Contracting Parties agree to recognise as highly desirable the adoption of all measures which will facilitate the international transport of passengers and luggage under conditions of speed and comfort corresponding to the importance of each train service. In particular such measures should comprise the establishment of services with through booking facilities and without change of carriage, as well as through luggage registration tickets, subject as far as possible to the same obligation.

ARTICLE 3

The High Contracting Parties agree to recognise as highly desirable the adoption, on the railways placed under their sovereignty or authority, of all measures, including those of a technical nature, which will allow of and facilitate the reciprocal utilisation and interchange of their rolling-stock.

It is clearly understood that the above-mentioned measures do not include those which would involve alterations in the essential characteristics of a railway system or rolling-stock.

ARTICLE 4

In the absence of existing Conventions, special Conventions shall be concluded to give effect as far as possible to the provisions laid down in Articles 1, 2 and 3 in respect of groups of contiguous territories.

ARTICLE 5

The concession of transport facilities or the establishment of tariffs and their adoption and application as regards passengers, subjects of any one of the participating

States or goods coming from or proceeding to any one of the participating States, over the same throughout route, in the same direction and in the same conditions, shall not depend either upon the nationality of the passengers or upon the ownership or commercial origin of the goods, or upon the flag or ownership of the vessels which have been or are to be employed either before or after their transport by rail. Transport rates shall be calculated in accordance with the tariffs legally in force and duly published, and any private agreement having as its object the granting of rebates to one or more passengers or to one or more consignors shall be expressly forbidden and considered null and void. Rebates may, however, be granted provided they are duly published and equally applicable to all under the same terms and conditions.

This stipulation does not prevent the existence and establishment of different tariffs for internal, import, export or transit traffic, having regard to the traffic conditions and to commercial competition between transport routes, nor does it affect the question of combined rail and sea tariffs.

ARTICLE 6

Without prejudice to the provisions of Article 24 of the Covenant, the participating States recognise as highly desirable, in cases in which existing Conventions or future Conventions referred to in Article 5 involve the creation of international bureaux, that these bureaux should exchange directly with the League of Nations any useful information relating to the exercise of their functions and submit to it an annual report.

ARTICLE 6a

Exceptions may be made in special cases to the terms of the preceding articles, in virtue of special or general measures which one of the High Contracting Parties may be obliged to take in the case of emergency affecting safety of the State or the vital interests of the country, it being understood that the principle of freedom of communications shall be observed as far as possible.

(ARTICLES 7 TO 19 REFERRED TO DRAFTING COMMITTEE.)

SECTION VI

DRAFT RECOMMENDATIONS

RELATIVE TO THE INTERNATIONAL REGIME OF RAILWAYS

(Text prepared, on instructions given by the Conference, by the Drafting Committee in the form of Recommendations based on the text of the Draft Convention prepared by the Committee on Railways.)

The General Conference on Communications and Transit assembled at Barcelona under the auspices of the League of Nations, being desirous that the principle of Freedom of Communications should be applied in conformity with Article 23 (e) of the Covenant of the League of Nations to the railways under the sovereignty and authority of the States which are represented at the Conference, or which eventually accept the present recommendations, and, recognising that in virtue of the above principle any one of these States is entitled on the railways under the sovereignty or authority of any other such State to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, unanimously recommends the adoption of the following provisions by the Governments of the said States.

The Conference recommends :

1. That the various States should adopt all possible measures which will facilitate the international transport of goods over the railways under their sovereignty or authority. These measures should, in particular, provide for :

Through transport, on the basis, as far as possible, of a single waybill, subject throughout to the same obligations;

Treatment of goods during the journey;

Transshipment, when this operation cannot be avoided;

The form in which international tariffs are to be established, and the conditions of their application.

2. That the various States should adopt all possible measures which will facilitate the international transport of passengers and baggage over the railways under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage, as well as through booking of baggage subject as far as possible to the same obligations throughout.

3. That the various States should take on the railways under their sovereignty or authority all possible measures, including those of a technical character, which will permit and facilitate the reciprocal utilisation and exchange of their rolling-stock. Those measures are excluded which would involve modifications in the essential characteristics of a railway system or of rolling-stock.

4. That, in the absence of existing conventions providing for the application of the principles laid down in paragraphs 1, 2 and 3 of these recommendations, special conventions should be concluded providing as far as possible for the application of these principles as between groups of contiguous territories.

5. That the various States should adopt all possible measures to ensure that the grant of facilities and the establishment of tariffs, as also their adoption and application

as regards passengers who are nationals of any one of these States, or as regards goods having as their origin or destination any one of these States, do not depend, over one and the same throughout route in the same direction and in the same conditions either on the nationality of the passengers, on the ownership or commercial origin of the goods or on the flag or ownership of the vessels employed either before or after their transport by rail. Transport rates should be calculated in accordance with the tariffs legally in force and duly published, any private agreement having as its object the granting of rebates to one or several passengers or to one or several consignors or consignees should be expressly forbidden and considered null and void. Rebates are granted, however, provided they are duly published and are equally available to all under the same conditions.

The above recommendations do not form any hindrance to the existence and the establishment of different tariffs for internal, import, export or transit traffic based on varying conditions or on commercial competition between routes. Nothing in these recommendations is to be taken as affecting in any way the question of combined rail and sea tariffs.

6. That, without prejudice to the provisions of Article 24 of the Covenant, in cases in which existing conventions or the future conventions contemplated in paragraph 4 of these recommendations involve the creation of International Bureaux, the necessary instructions should be given for these Bureaux to exchange directly with the League of Nations any useful information relating to the exercise of their functions and to submit to the League an annual Report.

7. That in exceptional cases deviations may be made from the preceding articles by measures of a general or particular character which a State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country; it being understood that the principle of freedom of communications must be observed to the utmost possible extent.

SECTION VII

RECOMMENDATIONS RELATIVE TO THE INTERNATIONAL REGIME OF RAILWAYS

(Text adopted by the Conference.)

The General Conference on Communications and Transit assembled at Barcelona under the auspices of the League of Nations, being desirous that the principle of Freedom of communications should be applied in conformity with Article 23 (e) of the Covenant of the League of Nations to the railways under the sovereignty and authority of the States which are represented at the Conference, or which eventually accept the present recommendations, and, recognising that in virtue of the above principle any one of these States is entitled on the railways under the sovereignty or authority of any other such State to all reasonable facilities for promoting and encouraging the flow of international traffic to or from its territory, unanimously recommends the adoption of the following provisions by the Governments of the said States.

The Conference recommends :

1. That the various States should adopt all possible measures which will facilitate the international transport of goods over the railways under their sovereignty or authority. These measures should, in particular, provide for :

Through transport, on the basis, as far as possible, of a single waybill, subject throughout to the same obligations;

Treatment of goods during the journey;

Transshipment, when this operation cannot be avoided;

The form in which international tariffs are to be established, and the conditions of their application.

2. That the various States should adopt all possible measures which will facilitate the international transport of passengers and baggage over the railways under their sovereignty or authority, under conditions of speed and comfort corresponding to the importance of each train service. In particular, such measures should comprise the establishment of services with through booking facilities, and, as far as possible, without change of carriage, as well as through booking of baggage subject as far as possible to the same obligations throughout.

3. That the various States should take on the railways under their sovereignty or authority all possible measures, including those of a technical character, which will permit and facilitate the reciprocal utilisation and exchange of their rolling-stock. These measures do not include those which would involve modifications in the essential characteristics of a railway system or of rolling-stock.

4. That, in the absence of existing conventions providing for the application of the principles laid down in paragraphs 1, 2 and 3 of these recommendations, special conventions should be concluded providing for the application of these principles as between groups of contiguous territories.

5. That the various States should adopt all possible measures to ensure that the grant of facilities and the establishment of tariffs, as also their adoption and application as regards passengers who are nationals of any one of these States, or as regards goods

coming from or proceeding to any one of these States, do not depend in the same conditions either on the nationality of the passengers, on the ownership or commercial origin of the goods, or on the flag or ownership of the vessels, employed either before or after their transport by rail. Transport rates should be calculated in accordance with the tariffs legally in force and duly published. Any private agreement having as its object the granting of rebates to one or several passengers, or to one or several consignors or consignees, should be expressly forbidden and considered null and void. Rebates may, however, be granted, provided they are duly published and are equally available to all under the same conditions.

The above recommendations do not prevent the existence and the establishment of different tariffs for internal, import, export or transit traffic, based on varying traffic conditions or on commercial competition between routes. Nothing in these recommendations is to be taken as affecting in any way the question of combined rail and sea tariffs.

6. That, without prejudice to the provisions of Article 24 of the Covenant of the League of Nations, in cases in which existing conventions or the future conventions contemplated in paragraph 4 of these recommendations involve the creation of International Bureaux, the necessary instructions should be given for these Bureaux to exchange directly with the League of Nations any useful information relating to the exercise of their functions and to submit to the League an annual Report.

7. The Conference recognises that in exceptional cases deviations may be made from the preceding articles by measures of a general or particular character which a State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country; it being understood that the principle of freedom of communications must be observed to the utmost possible extent.

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

Secretariat.

SECTION VIII

DRAFT CONVENTION ON PORTS OF INTERNATIONAL CONCERN

(Text based on notes on the deliberations of the Commission on the International Regime of Ports, Waterways and Railways of the Peace Conference, submitted by the Secretariat for information.)

(October 1919.)

I

Ports of International Concern.

ARTICLE 1

The following ports shall be deemed of international concern and submitted to the regime defined by the present convention.

Ports with or without free zones, specified as such in international treaties or agreements to which the territorial or mandatory State concerned is a Contracting Party. In the absence of express stipulations to the contrary, included in such treaties or agreements, the adoption of this regime shall not imply any limitation of territorial sovereignty.

II

Freedom of Navigation.

ARTICLE 2

In a port of international concern, the subjects, goods and flags of all States belonging to the League of Nations shall be treated in every respect on a footing of perfect equality, no distinction being made between the subjects, goods and flags of various countries and those of the country in the territory of which the port of international concern is situated, and no exclusive privilege in the matter of navigation shall be accorded to companies or individuals. In particular the vessels of any one of the States belonging to the League of Nations shall be entitled to transport goods of any description and passengers to or from such port under conditions which shall not be more onerous than those applied in the case of national vessels; they shall be treated on a footing of perfect equality with national vessels as regards port and harbour facilities and charges of every description including facilities of stationing, loading, and unloading, and of duties and charges of tonnage, harbour, pilotage, lighthouse, quarantine and all analogous duties and charges of whatsoever nature, levied in the name of or for the profit of the Government, public functionaries, private individuals, corporations or establishments of every kind.

In the event of the territorial State in which the port is situated granting a preferential regime to any State, this regime shall be extended immediately and unconditionally to all the States belonging to the League of Nations.

There shall be no impediment to the movement of persons or vessels other than those arising from prescriptions concerning customs, police, sanitation, emigration and immigration, and those relating to the import and export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

ARTICLE 3

The State in the territory of which a port of international concern is situated may, in so far as concerns the carrying on of coasting trade, assimilate this port to its other ports.

In the absence of any special Convention, this privilege shall not extend to the parts of the port of international concern which shall be declared free.

III

Duties and Charges.

ARTICLE 4

Dues [varying according to (the length of the journey) the nature of cargoes, and the operations carried out by ships during their stay in port] (1) may be levied, under the conditions of complete equality laid down in Article 2, on vessels using the port of international concern or the approaches thereto. They shall be reasonable and shall be devoted solely to cover the expenses of the administration, upkeep and improvement of the port and of the approaches thereto, or to defray the expenses incurred in the interests of navigation. The schedule of such dues shall be calculated on the basis of these expenses, and shall be published in the port.

Charges may also be levied in the port, in accordance with published schedules, for the use of cranes, weighing-machines, elevators, quays, warehouses, etc.

ARTICLE 5

Sanitary charges and dues for services rendered, such as pilotage, shall be reasonable having regard to those prevailing either in ports of the country in whose territory the port is situated or in similar ports.

ARTICLE 6

Customs duties, local octroi dues or consumption taxes may be charged, in such parts of the port as are not declared free, by the country in whose territory the port is situated.

IV

Works.

ARTICLE 7

In the absence of any special arrangement relative to the execution of works for maintaining and improving a port of international concern, it shall be the duty of the territorial States to take suitable measures to remove any obstacle or danger to navigation and to secure facilities for movement of ships in the port.

ARTICLE 8

In the event of the territorial State undertaking works of such a nature as detrimentally to affect the usefulness of the port of international concern, the suspension or

(1) The words between square brackets are those in regard to which a difference of opinion arose in the Commission on the International Regime of Ports, Waterways and Railways.

abandonment of such works may be enforced in the manner provided for in Article 15 below, due regard being had to the legitimate interests of the territorial State.

The lodging of an appeal to the League of Nations shall not be suspensive.

V

Free Zones

ARTICLE 9

A port of international concern, or certain specified parts of such ports, may be declared free.

ARTICLE 10

The facilities granted for the erection of warehouses, for packing and for unpacking goods shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the Free Zone shall be exempt from duty, whether of excise or of any other description, apart from the statistical duty provided for in Article 11 below. It shall be within the discretion of the territorial State to permit or to prohibit manufacture within the Free Zone. There shall be no discrimination in regard to any of the provisions of the present Article, either between persons belonging to different nationalities or between goods of different origin or destination.

ARTICLE 11

No duties or charges, other than those provided for in Articles 4 and 5 shall be levied on goods arriving in the Free Zone or departing therefrom, from whatever foreign country they come or for whatever foreign country they are destined, other than a statistical duty which shall not exceed 1 per mille *ad valorem*. The proceeds of this statistical duty shall be devoted exclusively to the maintenance of the statistical service dealing with statistics relating to the trade and shipping of the Free Zone.

ARTICLE 12

Import duties may be levied on goods leaving the Free Zone for consumption in the country in which the port is situated. Conversely, export duties may be levied on goods coming from such country and brought into the Free Zone. Import and export duties shall be levied on the same basis and at the same rates as similar duties levied at other Customs barriers in the country concerned. On the other hand, the territorial State shall not levy any import, export, or transit duties or other duties whatsoever on goods carried by land or water across its territory to or from the Free Zone from or to any other State.

The territorial State shall draw up the necessary regulations to secure and guarantee such free transit at least over all the railways and waterways in its territory normally giving access to the Free Zone.

VI

Administration of Ports of International Concern.

ARTICLE 13

Subject to stipulations to the contrary included in special treaties or agreements in which the territorial or mandatory State is a contracting party, the administration of a port of international concern shall be entrusted to the territorial or mandatory State concerned.

VII

Policing of the Port.

ARTICLE 14

Infringements of port regulations and infractions of laws and regulations shall be dealt with in accordance with the criminal law of the territorial State.

Differences of a civil or commercial character which may arise by reason of the utilisation of the port shall also be settled by the application of the laws of the territorial State.

ARTICLE 15

Differences which may arise between interested States with regard to the utilisation of the port and the application of the navigation and police regulations thereof shall be settled in accordance with the conditions laid down by the League of Nations.

ARTICLE 16

The provisions of the present Convention shall in no way affect the rights or duties in time of war of belligerents or neutrals.

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

General Secretariat.

SECTION IX

RESOLUTION ON THE INTERNATIONAL REGIME OF PORTS

(Presented by the Secretary-General for discussion in second reading.)

(March 10th, 1921.)

Preamble.

The Commission of Enquiry on Freedom of Communications and Transit, not thinking it opportune to consider the conclusion now of a general international Convention on the regime of ports, feels, however, that the following dispositions should be applied (with the reservation of all other additional stipulations which might be necessitated in certain cases) to the ports or parts of ports with or without free zones, which may be placed under an international regime or under the authority of the League of Nations, it being thoroughly understood that such a regime can only be applied in consequence of a special act involving particularly the consent of the State under whose sovereignty or authority the said port may be placed.

I

Provisions applicable to all Ports or parts of Ports, with or without Free Zones, referred to in the Preamble.

ARTICLE 1

Freedom of Use of the Port and Equality of Treatment.

The subjects, goods and flags of all nations shall enjoy entire freedom of use of the port, and, in this connection and in all respects, especially in what concerns the facilities and charges of port and quay, of every sort, including facilities of docking, of loading and unloading, duties and charges in regard to tonnage, wharfage, piloting, lighthouse service, quarantine and all analogous duties and charges of every nature, levied in the name and for the benefit of the government, of public officials, of private contractors, of corporations or establishments of every kind, shall be treated on a footing of perfect equality, so that, in particular, no distinction shall be made between the subjects, goods and flags of the different States and those of the State under whose sovereignty or authority the port is placed.

There shall be no impediments to freedom of use of the port except those resulting from dispositions in regard to customs, police, sanitary provisions, emigration or immigration, as well as the import or export of prohibited merchandise. Such dispositions, of a reasonable and uniform character, shall not impede traffic without valid reason.

ARTICLE 2

Charges.

All charges imposed for the use of the port or for its access or the facilities offered in the port under the conditions of equality prescribed in the preceding article, shall be

reasonable in rate and in the method of collecting them, and shall be established in such a manner that the total amount of the charges shall not exceed in any case the expenses of the work of construction, improvement and maintenance or administration of the port and of its approaches, as well as the expenses incurred in the interest of the use of the port and its approaches, or with a view to the furnishing and developing of the facilities offered in the port.

All other charges than those made by virtue of the present article or of Articles 8, 11 and 12 below, shall be forbidden.

ARTICLE 3

Works of Maintenance and Improvement.

In default of a special organisation relative to the execution of the works of maintenance and improvement, the State under whose sovereignty or authority the port is placed shall be under obligation to take measures, as far as need be, to remove all impediments or dangers to navigation and to assure facility of operation of the vessels in the port.

ARTICLE 4

Works dangerous to the use of the Port.

The State under whose sovereignty or authority the Port is placed shall be under obligation, in all cases, not to undertake any works of a nature to injure the facilities for use of the port or its approaches.

ARTICLE 5

Administration.

Except in case of special stipulations, the State which exercises sovereignty or authority over the port shall be responsible for the administration of the port.

ARTICLE 6

Jurisdiction.

Except in case of special stipulations, the competent jurisdiction in administrative, civil, commercial or criminal matters shall be the jurisdiction of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only in Unfreed Zones of Ports or parts of Ports referred to in the Preamble (1).

ARTICLE 7

Coasting Trade.

The State under the sovereignty or authority of which the port is placed may, in so far as concerns the carrying on of small coasting trade, assimilate the port to its other ports.

ARTICLE 8

Customs Duties, etc.

All customs duties, local tolls or consumers' taxes imposed upon the import or export of merchandise through a port submitted to the international regime shall be

(1) The free zone may comprise a fraction or the whole of the port, or part of the port, subject to the international regime.

the same whether the flag of the vessel or boat which has effected or is to effect the transport be the flag of the State exercising sovereignty or authority over the Port or any other flag. Except in case of an exceptional cause reasonably justifying a derogation because of economic necessity, these duties shall be established upon the same basis and at the same rates as similar duties applied to the other customs frontiers of the interested State, and all facilities which may be granted by this State upon other land or water routes or in other ports for the import and export of merchandise shall also be granted to import or export through the port subject to the international regime.

III

Provisions applicable only to Free Zones of Ports or parts of Ports referred to in the Preamble (1).

ARTICLE 9

General Regime of Free Zones.

The facilities accorded for the construction or use of storehouses, as well as for the packing and unpacking of merchandise shall be in conformity with the commercial conditions of the time. Every product whose consumption shall have been authorised in the free zone shall be exempt from customs, excise or other duties of any nature except those provided for in Article 11 below. The State under whose sovereignty or authority the port is placed shall have the right to authorise or forbid power installations in the free zone.

ARTICLE 10

Coasting Trade.

Except in case of special stipulations, the State under whose sovereignty or authority the port is placed may not assimilate the free zone of the port to its other ports in matters concerning the exercise of small coasting trade.

ARTICLE 11

Statistics Tax.

No duty or tax, other than as provided in Article 2, shall be imposed on products upon their entrance into, or exit from, the free zone. Whatever the foreign country from which they come or for which they may be destined, except a statistics tax which shall not exceed similar duties levied in other ports of the State under whose sovereignty or authority the port subject to international regime is placed, and shall not exceed 1 per mille *ad valorem* in any case.

ARTICLE 12

Collection of Duties.

The duties provided for in Article 8 above may be collected, under the conditions fixed in the said article, upon merchandise coming from the free zone, at the time of its entry into the territory under whose sovereignty or authority the port is placed, as well as upon merchandise destined for the free zone, upon its departure from the territory of the State under whose sovereignty or authority the port is placed.

(1) The free zone may comprise a fraction or the whole of the port or part of a port subject to the international regime.

ARTICLE 13

Transit.

The persons, merchandise, vessels, boats, cars, wagons or other means of transport, going to or from the free zone and crossing the territory of the State under whose sovereignty or authority the port is placed shall be considered in transit across the said State if going to or from the territory of any other State.

IV

Interpretation — Disputes.

ARTICLE 14

Application of the Present provisions in time of War.

These provisions do not in any wise detract from the rights and duties of belligerents and neutrals in time of war.

ARTICLE 15

Settlement of Differences.

All differences which may arise between interested States relative to the interpretation and application of these provisions, as well as, in a general way, all differences between interested States relative to the use of the port, shall be first brought before the International Commission entrusted with the administration of the port, should such a Commission have been instituted; if no International Commission exists, and also if the conclusions of this Commission should not be accepted by one of the States, each interested State may appeal to the Permanent Court of International Justice, under the conditions and according to the procedure which will be provided by the League of Nations.

All differences relative to the execution of works injurious to the facility of use of the port and its approaches, shall have the benefit of emergency procedure and may be the subject of a provisional finding and judgment of the International Commission and the Permanent Court of International Justice, which may prescribe the suspension or the immediate suppression of the said works, without prejudice to the final findings and judgment in regard to the basis of litigation.

SECTION X

RESOLUTION RELATIVE TO AN INTERNATIONAL REGIME FOR PORTS

(Text prepared by the Commission of Enquiry and submitted to the Conference.)

Preamble.

(See p. 231.) The Commission of Enquiry on Freedom of Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the regime of ports, nevertheless is of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under the authority of the League of Nations, or under an international regime, it being clearly understood that such a regime can only be applied in consequence of a special act involving, in particular, the consent of the State under whose sovereignty or authority the said port might be situated.

I

**Provisions applicable to all Ports or parts of Ports, with or without Free Zones,
referred to in the Preamble.**

ARTICLE 1

Freedom to use the Port and Equality of Treatment.

(See p. 231.) The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. In this connection and in all respects, they shall be treated on a footing of absolute equality particularly as regards port facilities and charges of every description, including facilities for stationing, loading and unloading, and tonnage, harbour, pilotage, lighthouse, and quarantine duties and charges, levied in the name of, and for the profit of, the Government, public authorities, private individuals or companies, corporations or establishments of whatever kind. In particular, no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions to the free use of the port other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import, or export of prohibited goods. Such regulations must be reasonable and uniform, and must not impede traffic unnecessarily.

ARTICLE 2

Charges for Services Rendered.

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in

Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the interests of their users. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8, 11 and 12, all other dues and charges are prohibited.

ARTICLE 3

Works of Upkeep and Improvement.

In the absence of any special organisation for carrying out works of upkeep and improvement, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any obstacle or danger to navigation and to facilitate the carrying out of the necessary operations by vessels in the port.

ARTICLE 4

Works dangerous to the use of the Port.

The State under whose sovereignty or authority the port is situated, shall be bound in every case not to undertake any works liable to prejudice the free use of the port or of the approaches thereto.

ARTICLE 5

Administration.

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration. (See p. 231.)

ARTICLE 6

Jurisdiction.

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only in the Zones which are not free of Ports or parts of Ports referred to in the Preamble (1).

ARTICLE 7

National Coasting Trade.

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports. (See p. 231.)

ARTICLE 8

Customs Duties, etc.

All customs, local octroi or consumption duties levied on imports or exports through a port which is subject to the international régime must be uniform, irrespective of (See p. 232.)

(1) The free zone may comprise a part or the whole of the port, or of the part of the port subject to international régime.

whether the vessel which effected or is to effect the transport flies the flag of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances reasonably justifying an exception on account of economic needs, these duties shall be fixed on the same basis and at the same rates as similar duties applied at the other customs frontiers of the State concerned, and all facilities which might be accorded by such State over other land or water routes or in other ports for imports and exports shall be equally accorded to imports and exports through the port subject to the international régime:

III

Provisions applicable only in Free Zones of Ports or parts of Ports referred to in the Preamble (1).

ARTICLE 9

General régime of Free Zones.

The facilities granted for the erection or use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from custom, excise, and all other duties of whatever description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

ARTICLE 10

National Coasting Trade.

(See p. 232.) Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may not, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

ARTICLE 11

Statistical Duty.

(See p. 232.) No duties or charges other than those provided for in Article 2 shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come or for which they are destined, other than a maximum statistical duty of 1 per mille *ad valorem*, which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic of the port.

ARTICLE 12

Collection of Duties.

The duties provided for in Article 8 above may be levied under the conditions established in the said article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

(1) The free zone may comprise a part or the whole of the port, or of the part of the port subject to international régime.

ARTICLE 13

Transit.

Persons, goods, mails and postal parcels, vessels, coaching and goods stock, or other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State if proceeding from or to the territory of any other State. (See p. 232.)

IV

Interpretation—Disputes.

ARTICLE 14

Application of the present provisions in Time of War.

The present stipulations shall be valid in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals. (See p. 232.)

ARTICLE 15

Relationship of the present obligations to the other obligations of the Members of the League of Nations.

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its right and obligation as a Member of the League of Nations.

ARTICLE 16

Settlement of Disputes.

Disputes as to the interpretation and application of these provisions, as well as, in general, as to the use of the port, shall be brought in the first instance before the International Commission responsible for the administration of the port, where such a Commission exists; should no such International Commission exist, or should its decisions prove unacceptable to any one of the States, any interested State may bring the matter before the Permanent Communications and Transit Committee of the League of Nations and may ultimately appeal within such period as may be prescribed, to the Permanent Court of International Justice, under the conditions provided for in the Resolutions of the Assembly of the League of Nations, dated..., and in the scheme for the organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee adopted by the General Communications and Transit Conference on...

These disputes shall, in cases of urgency, be accorded an accelerated procedure, the International Commission, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final conclusion, opinion and judgment on the basic cause of dispute, of pronouncing a provisional conclusion, opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore the facilities for the free use of the port which existed before the act or occurrence which gave rise to the dispute.

ANNEX TO SECTION X

REPORT ON THE DRAFT RESOLUTION

RELATIVE TO AN INTERNATIONAL REGIME FOR PORTS⁽¹⁾

*(Presented to the General Communications and Transit Conference
by the Commission of Enquiry.)*

By their Resolution dated 13th of February, the Council of the League of Nations invited the Commission of Enquiry on Freedom of Communications and Transit to draw up, with a view to its submission to the future Permanent Communications Organisation, that is to say, to the General Conference, a Convention on Ports similar to the Conventions on Freedom of Transit and on the International Regime of Waterways.

The Commission, whilst recognising that a Convention of this sort is undoubtedly desirable if the principle of Freedom of Communications is to be assured throughout its field of application, nevertheless decided to postpone the study of it, and merely to transmit to the General Conference a draft standard statute for certain ports for adoption by the Conference in the form of a "Recommendation" to the Members of the League of Nations.

The preparation of a Convention on Ports presents inherent difficulties. A General Convention on Ports, that is to say, one which could be applied to all national ports, and which the Belgian delegation even went so far as to propose, during the course of the discussion, appeared to the Commission to risk opening up, directly or indirectly, problems the solution of which, from the international standpoint, does not appear of immediate urgency or necessity. If, on the contrary, the Convention confined itself to laying down a regime for ports recognised as international, there would remain the task of identifying these, which could be done either by a geographical enumeration attached to the Convention in the form of an annex, or by a general definition. The former method would certainly have given rise to interminable discussions between States, and, as to a general definition, unless it were laid down simply that all ports situated on an international river system were to be considered as falling within the scope of the definition (a somewhat unnecessary provision, since, for these classes of ports, certain guarantees are already included in the Convention on the International Regime of Waterways) it seemed impossible to find a satisfactory criterium. Neither the volume of traffic, nor the fact of constituting the normal outlet of land-locked countries, nor the relative importance of national and foreign interests, as regards the commerce dealt with in the port, was capable of providing the basis of an accurate definition analogous to that given of international waterways.

The present "Recommendation" is intended to apply exclusively to ports placed under the authority of the League of Nations, and to ports placed in virtue of special acts under an international regime. It would be sufficient, in this case, for these acts to comprise or to make allusion to the whole or part of the proposed text; their drawing up would be thereby greatly facilitated. Further, the suggested regime has been conceived in such a way that it does not impose on any State obligations which cannot be reconciled with its national interests. It is to be hoped that when it has been put into practice in the ports referred to above, the Members of the League of Nations will be led gradually to apply it of their own accord to certain or all of their ports.

The following observations are suggested by the text which, broadly speaking, proposes to assure in international ports, whether "free" or otherwise, freedom in the use

(1) This Report forms part of the preliminary documents for the General Communications and Transit Conference (*Green Book*).

of the port, equality of flags, and the avoidance of any fiscal or technical measures which would tend, by placing the international port in an unfavourable position *vis-à-vis* to competing national ports, directly to impair the freedom in the use of the port.

PREAMBLE. — The “special acts” referred to in the preamble entail in particular the consent of the State under whose sovereignty or authority the port is situated. The expression “in particular” indicates that it must not be taken for granted that this consent is invariably sufficient of itself.

In the same way, if the sovereignty and authority under which the port is situated are shared by various States, it is for these States to agree among themselves, if necessary, as regards the application of the regime. The interpretation of the words “sovereignty and authority” is the same as in the Convention on Freedom of Transit (1).

ARTICLE 1. — Freedom to use the port must be understood as freedom of commercial use. The subjects of other nations are not thereby entitled to evade either police or special administrative regulations applicable to foreigners, or any regulations based on the constitution of the port, but the subjects, property and goods of every nation shall enjoy complete freedom as users of the port, of its equipment and, generally speaking, of everything appertaining to its use as a port.

The Commission was unanimous in considering it desirable that the flags of vessels belonging to any State not possessing a sea-coast should be recognised in the Ports referred to in the Resolution when they are registered in one place situated in its territory selected as the port of registration for such vessels, but did not consider it necessary to insert a special provision to this effect in the Resolution in view of the fact that a special Convention is proposed with the object of settling the question in a general manner (2).

The Swiss delegation had proposed that the ports referred to in the Resolution should likewise serve as places of registration for the vessels of the said States, but certain delegations being of opinion that this solution presented insuperable difficulties, the Commission decided not to deal with the question in the Resolution.

Equality between all nations does not in any way prevent special concessions being granted to companies or individuals of any particular nationality, providing that discrimination between such companies or individuals of different nationality be based on the same principle as the discrimination applied as between national companies and individuals where the same concessions are concerned.

The delegation of “authority” to a State, a port, or part of a port does not affect the equality prescribed in this article. In such a case, the concessionnaire State is responsible for the application of such equality in so far as the utilisation of the said port or part of a port is concerned.

ARTICLE 5. — The word “responsability” has been chosen in view of the cases in which the administration may not be exercised directly by a State, but through the medium of local organisations, concessionnaire companies, etc.

ARTICLE 7. — The Japanese delegation proposed the suppression of this article. On the other hand, the Polish delegation proposed that it be applied also to the cases referred to in Article 10 where the contrary solution had been the one adopted.

The Belgian, Dutch, Greek, Japanese and Portuguese delegations maintained that the principle of Freedom of Communications should involve the abolition, or at least the limitation of the right to reserve the national maritime coasting trade. The Chinese, French, Italian, Polish, Roumanian, Serb-Croat-Slovene, and Spanish delegations, on the other hand, considered that a reservation of this kind in no wise restricted freedom of international communications, and was therefore admissible.

After discussion, the Commission decided that there was no occasion here to settle the general question, and that the discussion had proved that the exact meaning of

(1) See *Verbatim Records and Text relating to the Convention on Freedom of Transit*, p. 286.

(2) See *Verbatim Records and Texts relating to the Convention on the Regime of Navigable Waterways of International Concern and the declaration recognising the right to a Flag of States having no Sea-Coast*, Part IV.

the words "national maritime coasting trade" was quite indefinite whenever these words were applied to the whole of a country, particularly when it is a question of a country whose shores are bathed by several seas or which possesses colonies, protectorates, etc. It was decided therefore to reserve completely the general principle and merely to express the wish that the study of the definition and the regime of the national maritime coasting trade should be undertaken with the least possible delay, with the assistance of the competent maritime authorities.

ARTICLE 8. — Article 8 is intended in particular to prevent a State exercising sovereignty or authority over an international port, and possessing national ports which are in competition with such port, from placing the international port in an unfavourable position by means of special customs or other duties. The "special circumstances reasonably justifying an exception on account of economic needs" envisage countries of a considerable compass, owning ports affected by a great diversity of economic conditions. For example, Russia allowed goods to enter ports on the Murman coast free of customs duties during certain months of the year because these ports were only accessible for a few months in the year; and it would be unreasonable to expect Russia to extend the same measures to an international port situated, for example, on the Black Sea.

The words "customs frontiers" of the States concerned constitute an exception to the principle laid down in the commentary on the Convention on Freedom of Transit, according to which a frontier referred to is the political frontier. Obviously the words "customs frontiers" will be replaced for each port by the geographical definition of its frontiers, and in those cases in which the country concerned exercises a protectorate, a mandate, etc., any difficulties which may arise must be solved individually.

ARTICLE 10. — The State under whose sovereignty or authority the international port is situated may not reserve to itself the national maritime coasting trade between one of its national ports and the free zone of an international port.

This free zone will not infrequently be established in favour of traffic proceeding from or to a land-locked State, and from this point of view ought to be considered as ex-territorial. A similar principle underlies all the provisions applicable only to free zones, and designed to enable States not possessing access to the sea to find in such free zones normal facilities for their traffic in accordance with the commercial requirements for the time being.

ARTICLE 11. — Article 11, as also other articles in this section reproduce the regime for free zones operative in German ports.

ARTICLE 13. — Article 13, which relates to transit, applies the above-mentioned principle of commercial ex-territoriality of the free zone.

ARTICLES 14 AND 16. — The commentary on these articles is identical with that on the corresponding articles (13, 14, 15 and 16) of the Convention on Freedom of Transit (1).

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, pp. 293 and 294.

SECTION XI

DRAFT RESOLUTION

RELATIVE TO AN INTERNATIONAL REGIME FOR PORTS

*(Text proposed by the Sub-Committee on Ports
and submitted to the Committee on Navigable Waterways.)*

PREAMBLE

The General Conference on Freedom of Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the Regime of Ports, nevertheless is of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international regime, it being clearly understood that such a regime can only be applied in consequence of a special act involving, in particular, the consent of the State under whose sovereignty or authority the said port might be situated.

I

General Provisions.

ARTICLE 1

Freedom to use the Port and Equality of Treatment.

The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. In this connection and in all respects they shall be treated on a footing of absolute equality, particularly as regards port facilities and charges of every description, including facilities for stationing, loading and unloading, and tonnage, harbour, pilotage, lighthouse, and quarantine duties and charges, levied in the name of, and for the profit of, the Government, public authorities, private individuals or companies, corporations or establishments of whatever kind. In particular, no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions to the free use of the port other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such regulations must be reasonable and uniform, and must not impede traffic unnecessarily.

ARTICLE 2

Charges for Services Rendered.

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first

cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the interests of their users. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8 and 11, all other dues and charges are prohibited.

ARTICLE 3

Works of Upkeep.

In the absence of any special organisation for carrying out works of upkeep and improvement, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any obstacle or danger to navigation and to facilitate the carrying out of the necessary operations by vessels in the port.

ARTICLE 4

Works Dangerous to the Use of the Port.

The State under whose sovereignty or authority the port is situated may undertake all works calculated to facilitate the use of the port or the approaches thereto. It shall not be obliged to suspend such works unless it is proved that they are likely to interfere with the facilities for using the port or its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken, as far as possible, to avoid obstructions or dangers to navigation.

ARTICLE 5

Administration.

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

ARTICLE 6

Jurisdiction.

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only to Zones which are not free of Ports or parts of Ports referred to in the Preamble.

ARTICLE 7

National Coasting Trade.

The State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports.

ARTICLE 8

Customs Duties, etc.

All customs, local octroi or consumption duties and accessory charges levied on imports or exports through a port which is subject to the international regime must be uniform, irrespective of whether the vessel which effected or is to effect the transport

flies the flag of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances reasonably justifying an exception on account of economic needs, the customs duties shall be those of the tariffs applied at the other customs frontiers of the State concerned, and all facilities which might be accorded by such State over other land or water routes or in other ports for imports and exports shall be equally accorded to imports and exports through the port subject to the international regime.

III

Provisions applicable only to free Zones of Ports or parts of Ports referred to in the Preamble (1).

ARTICLE 9

General Regime of Free Zones.

The facilities granted for the erection and use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise, and all other duties of whatever description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

ARTICLE 10

National Coasting Trade.

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may not, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

ARTICLE 11

Statistical Duty.

No duties or charges other than those provided for in Article 2 shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come or for which they are destined, other than a maximum statistical duty devoted exclusively to defraying the expenses of compiling statements of the traffic of the port, and at most equivalent to 1 per mille *ad valorem*.

ARTICLE 12

Collection of Duties.

The duties provided for in Article 8 above may be levied under the conditions established in the said article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

(1) The free zone may comprise a part or the whole of the port, or of the part of the port subject to the international regime.

ARTICLE 13

Transit.

Persons, luggage, goods, vessels, coaching and goods stock, or other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State if proceeding to or from the territory of any other State.

IV

Interpretation — Disputes

ARTICLE 14

These stipulations do not prescribe the rights and obligations of belligerents and neutrals in time of war. The stipulations shall, however, continue in force in time of war, so far as such rights and duties permit.

ARTICLE 15

These Regulations do not impose upon any Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

ARTICLE 16

Any dispute as to the interpretation or application of these Regulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

SECTION XII

DRAFT RECOMMENDATIONS RELATIVE TO AN INTERNATIONAL REGIME FOR PORTS

(Text prepared by the Committee on Navigable Waterways and submitted to the Conference.)

PREAMBLE

The General Conference on Communications and Transit, while it does not consider the moment opportune to envisage the conclusion of a General International Convention on the régime of ports, nevertheless recommends that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international régime, it being clearly understood that such a régime can only be applied in consequence of a special act involving, in particular, the consent of the State or States under whose sovereignty or authority the said port might be situated.

I

General Provisions.

ARTICLE 1

The subjects, property and flags of all nations shall enjoy complete freedom in the use of the port. In this connection and in all respects, they shall be treated on a footing of absolute equality particularly as regards port facilities and charges of every description, including facilities for stationing, loading and unloading, and tonnage, harbour, pilotage, lighthouse, and quarantine duties and charges, levied in the name of, and for the profit of, the Government, public authorities, private individuals or companies, corporations or establishments of whatever kind. In particular, no distinction shall be made between the subjects, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions to the free use of the port other than those arising from regulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such regulations must be reasonable and uniform, and must not impede traffic unnecessarily.

ARTICLE 2

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto, or in the interests of their users. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 8 and 11, all other dues and charges are prohibited.

ARTICLE 3

In the absence of any special organisation for carrying out works of upkeep, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove any danger or obstacle to navigation and to facilitate the carrying out of the necessary operations by vessels in the port.

ARTICLE 4

The State under whose sovereignty or authority the port is situated may undertake all works calculated to facilitate the use of the port or the approaches thereto. It shall not be obliged to suspend such works unless it is proved that they are likely to interfere with the facilities for using the port or its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken as far as possible to avoid obstructions or dangers to navigation.

ARTICLE 5

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

ARTICLE 6

Subject to any special provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only to Zones which are not free of Ports or parts of Ports referred to in the Preamble.

ARTICLE 7

The State under whose sovereignty or authority the port is situated may, as regards national maritime coasting trade, assimilate the port to its other ports.

ARTICLE 8

In the application of customs, local octroi or consumption duties and accessory charges levied on imports or exports through a port which is subject to the international regime, no difference shall be made by reason of the flag of the vessels effecting the transport, whether this flag is that of the State exercising sovereignty or authority over the port, or any other flag. In the absence of special circumstances justifying an exception on account of economic needs, the customs duties may not exceed those which are levied on the other frontiers of the State concerned, on goods imported and exported under the general conditions of the legislation of this State. All the facilities which may be accorded on other land or water routes in other ports of the same State for the import and export of goods shall be equally accorded to imports and exports under the same conditions through the port subject to the international régime,

III

Provisions applicable only to Free Zones of Ports or parts of Ports referred to in the Preamble.

ARTICLE 9

The facilities granted for the erection and use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs excise, and all other duties of whatever description, with the exception of the statistical duty provided for in Article 11 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

ARTICLE 10

Subject to any special provisions to the contrary, the State under whose sovereignty or authority the port is situated may, in case of the reservation of national maritime coasting trade, assimilate the free zone of the port to its other ports.

ARTICLE 11

No duties or charges other than those provided for in Article 2 shall be levied on goods entering or leaving the free zone, irrespective of the foreign country from which they come or for which they are destined, other than a maximum statistical duty devoted exclusively to defraying the expenses of compiling statements of the traffic of the port, and at most equivalent to 1 per mille *ad valorem*.

ARTICLE 12

The duties provided for in Article 8 above may be levied under the conditions established in the said article, upon goods despatched from the free zone, at the time of their import into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their export from the territory of the State under whose sovereignty or authority the port is situated.

ARTICLE 13

Persons, luggage, goods, vessels, coaching and goods stock, or other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State if proceeding to or from the territory of any other State.

IV

Miscellaneous Provisions.

ARTICLE 14

These stipulations do not prescribe the rights and obligations of belligerents and neutrals in time of war. The stipulations shall, however, continue in force in time of war, so far as such rights and duties permit,

ARTICLE 15

These stipulations do not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

ARTICLE 16

Any dispute as to the interpretation or application of these stipulations which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the contracting States undertake before resorting to any judicial proceedings, and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

SECTION XIII

RECOMMENDATIONS RELATIVE TO PORTS PLACED UNDER AN INTERNATIONAL REGIME

(Text adopted by the Conference.)

Preamble.

The General Conference on Communications and Transit, while considering that the moment has not yet arrived for the conclusion of a General International Convention on the Regime of Ports, is nevertheless of opinion that the following provisions should be applied (subject to such additional stipulations as may be necessary in any particular case), to the ports or parts of ports, with or without free zones, which may be placed under an international regime; it being well understood that such a regime can only be applied in consequence of a special act involving the consent of the State under whose sovereignty or authority the said port is situated.

I

General Provisions.

ARTICLE 1

The nationals, property and flags of all nations shall enjoy complete freedom in the use of the port. They shall be treated in this connection and in all respects on a footing of absolute equality, particularly as regards berthing, loading and unloading facilities and tonnage, harbour, pilotage, lighthouse, and quarantine dues, levied in the name and for the profit of the Government, public authorities, private individuals or companies, corporations or establishments of any kind. In particular, no distinction shall be made between the nationals, property and flags of the different States and those of the State under whose sovereignty or authority the port is situated.

There shall be no restrictions on the free use of the port other than those arising from stipulations concerning customs, police, public health, emigration or immigration, or the import or export of prohibited goods. Such stipulations must be reasonable and uniform and must not impede traffic without good reason.

ARTICLE 2

All charges imposed for the use of the port or of the approaches thereto or of the facilities afforded in it shall be levied under the conditions of equality prescribed in Article 1, and shall be reasonable, having regard to the expenses incurred in the first cost, improvement, upkeep and administration of the port and of the approaches thereto or to expenditure incurred in the interests of the users of the port or its approaches. The tariff of these charges shall be posted up in every such port.

Subject to the provisions of Articles 7 and 9, all other dues and charges are prohibited.

ARTICLE 3

In the absence of any special organisation for carrying out works of upkeep, it shall be the duty of the State under whose sovereignty or authority the port is situated to take suitable measures to remove as quickly as possible any danger or obstacle to navigation and to facilitate the operations of vessels in the port.

ARTICLE 4

The State under whose sovereignty or authority the port is placed may undertake all works for upkeep and improvement of the port or of its approaches. It shall be bound to suspend them only if it is proved that they are calculated to prejudice the use of the port and of its approaches.

It shall also be permitted to undertake works intended for territorial defence, care being taken as far as possible to avoid dangers or obstructions to navigation.

ARTICLE 5

Subject to any special provisions to the contrary, the State which exercises sovereignty or authority over the port shall be responsible for its administration.

ARTICLE 6

Subject to any provisions to the contrary, the competent jurisdiction in administrative, civil, commercial or penal matters shall be that of the State which exercises sovereignty or authority over the port.

II

Provisions applicable only to Zones which are not Free.

ARTICLE 7

In the levying of any customs, local octroi or consumption duties or of any incidental charges imposed on imports or exports through a port which is subject to the international regime, no difference shall be made on account of the flag of the vessel effecting the transport, whether such flag is that of the State exercising sovereignty or authority over the port, or any other flag.

In the absence of special circumstances justifying an exception on account of economic needs, the customs duties must not be higher than those imposed at the other customs frontiers of the State concerned on imports or exports under the general legislation of the State. All facilities accorded by such State over other land or water routes or in other ports to imports and exports shall be equally accorded to imports and exports through the port subject to the international regime.

III

Special Provisions relating to Free Zones.

ARTICLE 8

The facilities granted for the erection or use of warehouses, as also for packing and unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise,

and all other duties of every description, with the exception of the statistical duty provided for in Article 9 below. It shall be within the discretion of the State under whose sovereignty or authority the port is situated to permit or prohibit manufacture within the free zone.

ARTICLE 9

No duties or charges other than those referred to in Article 2 shall be levied on goods entering or leaving the free zone, whatever may be the foreign country from which they come or for which they are destined. A maximum statistical duty of 1 per mille *ad valorem* may, however, be imposed, which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic of the port.

ARTICLE 10

The duties referred to in Article 7 above may be levied under the conditions prescribed in the said Article upon goods despatched from the free zone at the time of their entry into the territory of the State under whose sovereignty or authority the port is situated, as well as upon goods destined for the free zone, upon their leaving the territory of the State under whose sovereignty or authority the port is situated.

ARTICLE 11

Persons, baggage and goods and also vessels, coaching and goods stock and other means of transport, proceeding from or to the free zone and crossing the territory of the State under whose sovereignty or authority the port is situated shall be considered in transit across the said State, if proceeding from or to the territory of any other State.

IV

Miscellaneous Provisions.

ARTICLE 12

The present stipulations do not affect the regime to be applied to national maritime coasting trade.

ARTICLE 13

These provisions do not prescribe the rights and duties of belligerents and neutrals in time of war. They shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 14

These provisions do not impose any obligations conflicting with the rights and duties of a State as Member of the League of Nations.

ARTICLE 15

Any dispute between States as to the interpretation or application of these provisions which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order, however, that such disputes should be settled in a friendly way as far as possible, they shall, before resort is made to any judicial proceedings, and without prejudice to the powers and right of action of the Council and of the Assembly, be submitted for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communication and transit. In urgent cases a preliminary opinion may be given recommending temporary measures intended in particular to restore the facilities for the free use of the port which existed before the act or occurrence which gave rise to the dispute.

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On the other hand I am aware that my presence at this tribune might cause you some slight surprise. "What!", you will exclaim, "does this Asiatic, coming from a far-off land, and belonging to another race and another civilisation, venture to make a statement on the important question of the regime of international navigable waterways—a regime which had its birth in Europe?" I venture to hope, however, that after my explanation you will understand that the matter is not so absurd as it might appear at first sight.

Although Japan has only recently taken her place in the family of civilised nations, she already takes the keenest interest in all world-questions, especially in those relating to international communications, such as transit, railways, merchant marine, the traffic of ports, not to mention the fact that Japan herself possesses three international rivers, the Yalu, the Tumen and the Poronai. For these reasons the work of this Conference interests me intensely, as it does all Japanese, and I need scarcely tell you how strongly attracted I was, at the very beginning of the Peace Conference in Paris, by the study of the clauses relating to ports, waterways and railways to be inserted in the Treaty of Versailles. It was always with the liveliest interest that, in my capacity as Japanese Delegate, I took part for eighteen months in the innumerable sittings of the Peace Conference, as well as in those of the Commission of Enquiry, of which this Conference is the brilliant outcome, and of which the *Green Book* is the valuable fruit. As a member of the Central Territorial Committee, of the Committees on War Responsibilities and on New States, and of many other Committees of the Peace Conference at Paris, I was always particularly fascinated by the attractive nature of the work of the Commission of Enquiry which was the forerunner of the present Conference. Thus I gradually became familiar with all these questions, thanks to the goodwill of all the most highly-qualified experts, some of whom I have the pleasure to see here; and for this reason I had the temerity to accept the invitation extended to me to make a statement on these serious problems, in which the whole world is concerned. I venture therefore to hope that you will be so good as to grant me an indulgent hearing.

When the armies of the First French Republic, which had triumphed over the coalition formed against them by the Powers of the old regime, had liberated Belgium, they found across their path two international rivers, the Scheldt and the Meuse. These rivers had been closed to international trade for more than a century and a half. The executive Council of France deliberated on September 20th, 1792, upon the conduct of the French armies in the countries which they occupy, and the result of these deliberations was as follows :—

1. That the obstacles and hindrances to trade which had hitherto existed both on the Scheldt and on the Meuse are directly contrary to the fundamental principles of natural law which all Frenchmen have sworn to uphold;

2. That the course of rivers is the common and inalienable property of all the countries through which they flow; that a nation would not be justified in claiming the right to occupy exclusively the channel of a river or in preventing neighbouring peoples, inhabiting its upper banks, from enjoying the same advantages; that such a privilege is a remnant of feudal servitude, or at least of an odious monopoly which was only established by force, and only tolerated through powerlessness to prevent it, and that it may therefore be revoked at any time and in spite of all Conventions, since nature does not recognise privileged nations any more than she recognises privileged individuals; the rights of man are eternally inviolable;

3. That the glory of the French Republic requires that, wherever she extends the protection of her arms, liberty shall be restored and tyranny overthrown;

4. That, when the free navigation of rivers and the emancipation of commerce in these provinces are added to the other advantages secured to the Belgian people by the French Armies, there will not only be no reason for the people to fear for their own independence, or to doubt the disinterested motives of the Republic, but the nations of Europe themselves will no longer be able to refuse to recognise that the sole ambition of the French people is to destroy all tyrannies and to secure the triumph of the rights of man.

Such was the ideal which, at the dawn of the 19th century, was proposed by the founders of a new world-order as a goal for all nations. A few years later, in 1814,

by the Convention of Paris, this international programme was carried into practice as regards the Rhine, which may be said to be the oldest of the great international rivers. The Convention perpetuates the common ownership of this river and its co-administration by its riparian States. This was by no means a special or regional solution, since the Convention brought about the meeting of a Congress, of which it defined the exact purpose and scope as follows :

In the same way, with a view to facilitating communication between nations and rendering them better known to one another, it shall be considered and decided at the coming Congress in what way this provision may be extended to all other rivers which, in their navigable course, divide or traverse different States.

That is the essential point on which I desire, if possible, to concentrate your attention,—the world-wide character of the idea which, from the outset, has guided the development of the modern statute of a waterway. As early as the 18th century, our predecessors realised that any adequate solution of the problem with which we are dealing to-day under the auspices of the League of Nations would be vain and ephemeral unless it rested on a universal foundation. This Congress, for which the Convention of Paris made provision, was the Congress of Vienna. The forces of progress vanished utterly amidst the clash of selfish ambitions,—the Congress opened under the ægis of divine right. But such is the power of ideas that, in spite of the triumph of individual interests, in spite of the opposition of mean considerations, the universal scope of the proposed formulas could not be ignored. Doubtless the solutions adopted have since been found in many respects inadequate; doubtless the work which was done lacked inspiration and even sincerity. Could it be otherwise under the circumstances in which this Congress assembled at Vienna? But these imperfect solutions were capable of application without distinction of continent or region, and the birth of modern law regarding waterways dates from that time.

However imperfect these solutions, the Treaty of Vienna must serve us as a beacon in the progress of upward-striving humanity. Besides freedom of navigation on international rivers, do not Articles 108 and 109 of this Treaty allude to freedom of navigation on all the tributaries of international rivers without distinction? I will read these articles :

ARTICLE 108. — Powers whose States are separated or crossed by the same navigable River, engage to regulate, by common consent, all that regards its navigation. For this purpose they will name Commissioners who shall assemble at latest, within six months after the termination of the Congress, and who shall adopt, as the bases of their proceedings, the Principles established by the following articles.

ARTICLE 109. — The navigation of the Rivers, along their whole course, referred to in the preceding Article, from the point where each of them becomes navigable, to its mouth, shall be entirely free, and shall not, in respect to Commerce, be prohibited to any one; it being understood that the Regulations established with regard to the Police of this navigation shall be respected, as they will be framed alike for all, and as favourable as possible to the commerce of all nations.

Again, have we not seen that great world-Republic of to-day, the United States of America, plead the decision of the Congress of Vienna, as early as 1824, in order to obtain the free navigation of the St. Lawrence, on which the vessels of all nations may now even carry on coasting-trade? Do not these ideals arise out of the French Revolution, which served as a starting-point for the legal process in virtue of which the 19th century saw the progressive expansion of free world-wide navigation—on the Amazon, the Rio de la Plata, the Rio Grande and their tributaries?

Greatly as I am tempted to do so, I could not, without exceeding the limits of this rapid retrospective summary, recapitulate the parallel evolutions of the regime of international waterways in Europe, Asia and Africa.

While in Africa freedom of navigation was making important advances on the Congo and the Niger; and while even in Asia, in our own continent, the Yang-Tse, the immense national river of China, was opened by special agreements to free navigation by foreign flags, thus making possible, in the interests both of China, in particular and of other countries concerned, in general, the exploitation of the fabulous wealth of that marvellous Republic, the same evolution was not always apparent in Europe:

The continent from which this lofty idea of liberty had sprung had not itself succeeded in applying it to the Danube; and, on the whole, the internationalisation of the Rhine itself, during the 19th century, marks a retrogressive phase.

Such was the legal position at the time of the opening of the Peace Conference of Paris—already famous in history—and of the birth of the League of Nations.

During this period corresponding radical changes had taken place in the technical sphere. In 1815, more than a hundred years ago, waterways were, indeed, a relatively important instrument for communication between nations, but the art of the engineer was still in its infancy; the activities of experts, of mankind indeed, were confined merely to the preservation of the waterways. Sea-going vessels seldom penetrated far into the interior of countries, except in quite abnormal cases. Navigable rivers, whose systems had been separated from each other by nature, only served in most cases for a comparatively limited commerce. The present situation is absolutely different.

After the period from about 1860 to 1870,—during which people were tempted to believe that river navigation would soon belong to the past, so complete had been the triumph of railways—a sudden revival took place in the use of this means of transport; and this revival, though it was more noticeable in Russia than, for instance, in North America, was not limited to the Old World, as is generally held in Europe.—For us the Old World is our world, but I speak from the standpoint of Europe.—The problem of river navigation thus regained the primary importance which it formerly possessed. But it appears before us now under quite different aspects. The art of the engineer, it may be said, no longer recognises any obstacles; not only does he improve the waterways which already exist, but he multiplies them, marks them out in accordance with economic currents, connects them with each other, regularises them, deepens them. During the Peace Conference we talked a great deal of a single Rhine-Danube system. In Asia too, we have an ambitious scheme for a single system. I may say, therefore, that each continent will soon form one single system of navigable waterways. The routes leading to the heart of continents are being opened more and more to sea-going ships. Mixed forms of navigation are created, and waterways—the work of nature—are thus becoming to an increased extent the work of man. Regional interests are being merged and absorbed in world-wide interests. The ideals of 1792, which have never ceased to move onward along the path of Law, have themselves been outstripped by Fact. Henceforth, the engineer will lead the jurist, and we have been invited by the League of Nations to set the seal, as it were, on technical achievements.

You are aware of the circumstances which, at the Peace Conference in Paris, gave rise to the idea of a general Convention on International Waterways. The Peace Conference considered that the century-old work of the Congress of Vienna should be modernised; this task, the necessity for which it thus proclaimed, is foreshadowed in all the articles bearing on the matter, and the way is paved for its accomplishment. The Peace Conference, however, very wisely considered that it was not desirable for it to carry out this revision itself, and decided that it was not the belligerents of the Great War alone who should collaborate in this work. It therefore appealed to the authority of the League of Nations, and expressed the wish that this task should be carried out under the League's auspices, with the spontaneous support of all its Members.

We find ourselves, then, faced with a scheme which has been deeply pondered and fully discussed. Far be it from me to affirm that this scheme is complete. Its authors will be the first to recognise, as I do, all its imperfections, but they claim for it the merit that it is sincere, and that it has been conceived in a practical yet idealistic spirit. In drawing it up, the highest considerations were kept in view. Never have the possibilities of its practical application been lost to sight; never, above all, has the attention of its authors been exclusively concentrated upon one part of the globe. Rather have they endeavoured to bear in mind, to the utmost possible extent, the point of view of the New World as well as of the Old, the point of view of African as well as of European regions, of Asia as well as of Europe.

This work is now submitted for your serious consideration. I myself am convinced that the enlightened assistance of several States—particularly of certain American States—which we lacked in Paris, will be of infinite value to us, and will give us, I feel sure, new ideas and invaluable practical suggestions. But whatever changes the

work which serves as a basis for our labours must and should undergo, let me beg you never to lose sight for one moment of the imperative necessity for attaining the following essential point : a new foundation must result from our labours—a new point of departure, from which fresh efforts must be made in every direction—a fertile soil upon which may thrive private, regional and continental activities. I have no hesitation in saying that if the General Convention on Navigable Waterways were to fail, the progress of the judicial evolution of the world would be threatened with extinction, and the resulting universal economic loss would be of incalculable extent; but I am absolutely convinced that the goodwill of those participating in our labours—of which we have had such striking proofs—will not fail us; the Conference of Barcelona will be quoted in the future as a worthy successor to the celebrated Congress of Vienna, which was exclusively European. May the work of this Conference—which is destined to become historic—be inspired by the example of that Congress, whilst avoiding its weaknesses and mistakes?

Such, Gentlemen, are my ardent desires on behalf of the League of Nations, born but yesterday, but already evincing the promise of a magnificent future.

The PRESIDENT (speaking in French). — I am sure that I am voicing the opinion of the whole Conference in thanking the Vice-President, M. Adatci, who has just given us such a clear, striking, eloquent and philosophical statement of the questions which are now before us with regard to the Convention on Navigable Waterways. As we are dealing with navigable waterways, he has very wisely gone back to the very sources, and I think that he could not have given us a better proof of the interest of the questions which you are to discuss. Since they go so far back into the past, it is evident they have occupied the minds of our predecessors at all periods. M. Adatci's statement might perhaps be summed up in these words : *Civilisation is the development of the navigability of rivers*. Indeed, civilisation made its way from the sea along the river-courses, and in this way it penetrated to the furthest depths of the continents of the Old World. This, I think, is the philosophy of the statement which the Vice-President has given us, and I am merely putting into simple phrases the lofty and profound words which he has uttered.

The Barcelona Conference is, then, the successor of the Congress of Vienna in the great tradition which had its origin in Europe, and I venture to thank our Vice-President for having recalled the part taken by France in originating, this tradition at the time when the great principles of the French Revolution were entirely changing the political ideas of Europe. These principles have gradually extended over the rest of the world, and M. Adatci has shown us that it is this progress which unites us to-day in our sentiments and in our desire for union under the ægis of the League of Nations. Thus is revealed the greatness of the work which you are undertaking, and its new and original character,—new, since you are working under the auspices of the League of Nations which, founded in the wake of the terrible events which have just shaken the world, has become the hope of the nations for a better future and for the consolidation of the progress which the world has accomplished—sometimes at so great a cost—in the course of centuries.

It is with this sentiment that this important discussion opens; but before beginning the debate, I should like once more to thank the Vice-President for the excellent use which he has made of the French language. In truth, we Frenchmen envy him the clearness, the purity, the strength and the Attic eloquence in which he has clothed his Statement.

We will now follow the desire of M. Adatci by entering upon the general discussion.

GENERAL DISCUSSION

Dr. LELY (Netherlands; speaking in French). — Mr. Chairman, Gentlemen, I should like to add a few remarks to the general observations which we have just heard on the subject of the Draft Convention on the International Regime of Navigable Waterways.

The first important question, that of definition, gave rise to various important expressions of opinion on the part of the Commission of Enquiry. It is not difficult

to grasp the various and very logical desiderata,—they have been most clearly set forth in the explanatory statement (1). It appears to me that the proposed text of Article 1 adheres too closely to the fundamental idea of the Treaty of Vienna, which was signed more than a century ago, and that it does not take sufficiently into account the fact that circumstances are entirely different to-day. The fundamental principle of the Treaty of Vienna carrying freedom of navigation into practice and aimed at governing waterways, regulations at establishing both those which separated two or more States, and those traversing more than one State, from the point where they became navigable to their mouth. In the fundamental definition submitted to us, this idea is in great part retained, except that the qualification *as far as the sea* has been replaced by *from the sea*, and that the condition for navigability is enlarged by the addition of the word *naturally*, which, according to the explanatory statement, is to be understood as meaning *in its natural state* (2). As regards the fundamental idea of this definition (dividing or crossing several States), it is questionable whether it is in real harmony with that conception of internationalisation which is derived from the provisions of Article 23 of the Covenant and Article 338 of the Treaty of Versailles, and which should be its basis. Doubtless the conditions proposed are logical in all cases where there is a question of regulations concerning the carrying out of customs formalities or concerning the right of passage, or even the interests which other riparian States have in navigation; but these side-issues cannot form the basic idea of the definition as at present drafted.

The aim to be deduced from the Covenant is *to secure and maintain freedom of communications*. This aim is not limited to agreements for control between riparian States,—it has a much wider scope, and includes the interests of navigation from the point of view of world commerce. These interests are connected solely with the *nature of the waterway itself*, not with the question whether it does or does not touch at any part—either by crossing or by bordering—the territory of more than one State. These interests are intimately connected with the *degree of navigability* of the waterway, both as regards the tonnage of the ships to which it allows access into the interior of the country, and also as regards the distance up to which such access is possible; and further with the use which is, or may be, made of it. In other words, the interests depend on a certain number of circumstances which are purely questions of *fact*, and these circumstances cannot be expressed in a short general formula. To the objections that the same difficulties did not arise at the time of the application of the Treaty of Vienna, I reply that we must not forget that the Treaty of Vienna was, at any rate at the outset, applicable to Central Europe, and that at this period Europe was divided into a great number of States, so that it was possible to assume *a priori* that a watercourse possessing great interest for navigation would directly involve the interests of more than one State.

As regards the second condition, namely, that the waterway must be a watercourse *naturally accessible from the sea*, or, in other words, that the waterway—no matter whether works have been carried out upon it or not—has been, or is in its natural state, accessible from the sea to any kind of navigation, I should like to make the following observations :

Why should the natural state of the watercourse be taken as a criterion? The state of the watercourse as a result of technical operations is of far more concern. I can perfectly well understand that, if it were a question of a legal principle, the original state of the watercourse would be taken as a basis for discussion. But as we are primarily concerned with the principle of community of interests, the original state before the work of improvement was carried out has nothing to do with the matter. At the time of the Treaty of Vienna this question was not discussed, because, at that time, watercourses were almost all in their natural state.

It is obvious that the present state of these watercourses may be absolutely different from their original state. The Rhine, for example, would certainly not have the predominantly international character which it has at present if the watercourse and

(1) Preliminary documents of the Barcelona Conference, *Green Book* (see p. 414 of the present volume).

(2) See p. 424 of this volume.

its mouth were still in their original condition. The limitation of international waterways to watercourses—to the exclusion of canals, which must be inferred from the fact that only watercourses are mentioned—is a matter of equal importance. What was the motive at that time for the exclusion of canals in general, even of those which are of the greatest importance for world commerce, whilst lateral canals, constructed in order to remedy the defects of a river, are not excluded? I am thinking primarily of canals uniting two seas which are of capital importance for world commerce. I have in mind here particularly the Suez Canal and the Panama Canal, the first of which we owe to France, the second to France and America.

The Treaty of Vienna cannot, in my opinion, be used as a basis for defining international waterways in the sense in which the League of Nations proposes to use it in accordance with Article 23 of the Covenant. This latter definition would also include certain waterways, the internationalisation of which is of very slight interest. The Treaty of Vienna left the putting into practice of the fundamental principles which it laid down to be subsequently embodied in regulations. But to-day the various provisions of the present Draft Convention are to be immediately applicable to all watercourses referred to in the definition, and this may give rise to certain difficulties, particularly as regards the administrative provisions of Article 9. The question which arises is therefore the following: Is the immediate application of these principles necessary or even desirable in the case of waterways of slight importance?

A glance at the map will show that various large watercourses of great importance are absent, whilst the system of regulation would, from purely accidental causes, apply to a certain number of unimportant watercourses. The Ganges, for example, becomes international, because on a small part of its tributary, the Hooghly, there is a French colony. Perhaps the Godavery would also become international on account of the French colony of Yanam, which is situated at its mouth, but I have not the necessary details on this point. The St. Lawrence, which communicates with the Great American Lakes by means of locks, could not, apparently, be considered as international except at some distance from the lakes, because there happen to be rapids on this river. I may also recall the case of the Po, which would perhaps become international, because it is connected through its tributary, the Ticino, with Lake Maggiore, which crosses the Swiss-Italian frontier, though I do not know whether this lake is accessible from the sea through the Po and the Ticino in their natural state. Again, there are the Parais in the Island of Sakhalin; the rivers Fao-Tan and Kan-Kiang, which flow together across Kwang-Chu-Wang, a little river in the Island of Timur; the Sobukoff in Borneo, and the Fly and the Kaiserin Augusta in New Guinea. I do not know whether these latter waterways are navigable as far as the frontier which they cross.

The result of the definition is then that international waterways exist chiefly where navigation is free in Central Europe, particularly in Belgium and the Netherlands; but that in other parts of Europe international waterways exist only in exceptional cases, and consequently navigation will only be free there in exceptional cases. As regards the other parts of the world, you will see on the map that there are international waterways in South America, but that in the rest of the world international waterways, and consequently freedom of navigation, are rare. I am therefore of opinion that the definition cannot serve as a basis for the Convention.

It is true that this difficulty might be remedied by a voluntary declaration such as that contemplated in paragraph 2 of Article 1, and also that commonsense would make a dead letter of the provision in the case of insignificant watercourses, but I think that an inaccurate deduction has been drawn from Article 23 of the Covenant.

What would be the right solution? The aim of the task entrusted to us by the Council of the League of Nations is two-fold. We have to decide upon measures for the execution of that portion of Article 23 of the Covenant which relates only to freedom of communications, and upon the measures for the carrying out of general conventions referred to in Articles 338 and 379 of the Treaty of Versailles concerning the international regime of waterways. Of these two aspects, the first—freedom of communications—is the more general, and the second—the international regime—is the more particular, aspect. This general idea—freedom of communications—is not limited in any way in the Covenant; on the contrary, it is conceived in the broadest possible sense.

As regards the realisation of this idea, we are allowed complete freedom to give the measures the form either of a Convention or of Recommendations, but it is quite otherwise as regards the second aspect, the internationalisation of particular waterways. In Article 338 of the Treaty of Versailles a specific demand is made that this internationalisation shall be established by a Convention. From this we must deduce that freedom of communications and internationalisation are two distinct ideas; each requires its own system of regulations, and both are not necessarily covered by one and the same instrument. It is obvious that navigation on an international waterway must be free. But it is equally obvious that navigation on any waterway may be free, even though the waterway is not internationalised.

In all countries, ordinary roads are open to free traffic, whether pedestrian, horse-drawn or motor traffic, although it has never occurred to anyone to internationalise the roads for this purpose. For this reason the idea of freedom of communication leads, both as regards waterways and also ordinary roads, to the acceptance of this freedom as a general principle instead of only recognising it for particular waterways as an acquired legal right. On the contrary, we must lay stress upon the general application of this freedom, and the limitations which must be placed upon it, in the interests of security, order and so on, must be specified as particular exceptions. It is obvious that we could not in any general manner confer an international character on waterways; in order to do so, the waterways must fulfil certain special conditions. It seems to me therefore essential to separate the two ideas,—the free practice of navigation and internationalisation.

The idea of freedom, like the idea of equality, requires a definition explaining the significance of these ideas in their application to navigation. We may well make certain restrictions in this definition; but the ideas by their very nature preclude territorial restrictions.

A glance at the map will show that the method followed in drawing up the Draft Convention does unexpectedly result in a territorial division. Indeed, if the Draft Convention were applied in its present form, there would be freedom in some parts of the world and in others none at all. I see no reason why freedom of navigation should not be as practicable as freedom of traffic on roads. In my country, both kinds of freedom exist fully and unrestrictedly, and I think that the same freedom exists in England, France and Belgium.

In my opinion our guiding principle in attaining this internationalisation should be the interest of navigation from the point of view of world commerce, and, after considering the various factors which determine that interest, I see only *one* course which can possibly lead to a satisfactory solution,—the system of enumeration. We ought to have an enumeration such as that contained in Article 331 of the Treaty of Versailles. But for this, every waterway would have to be considered separately,—not merely the rivers but also the canals; and primarily among the latter, those canals which connect either two seas or two international waterways, or which connect a sea with an international waterway. The list in Article 331 of the Treaty of Versailles refers — and in my opinion, quite logically — to canals which join two international waterways, that is to say, a canal from the Rhine to the Danube, should such a canal be constructed. We might therefore begin by declaring international those waterways the navigation of which, as a result of their international importance, has already been declared free by common agreement in virtue of the Treaty of Vienna, or by a special navigation act. We might afterwards add other waterways, by means of declarations such as those at present provided for in the second paragraph of Article 1. It therefore seems to me that a distinction must be drawn between waterways of major importance, which would be called *international* waterways, and to which all the provisions of the Convention would be applicable, and those for which this designation is not considered necessary; for these would be sufficient to declare applicable the provisions of Articles 2 and 3 regarding the free practice of navigation and equality of treatment.

To sum up, I am of opinion that, in principle, the fundamental definition in Article 1, paragraph 1, is not accurate, and I consider that a fundamental definition is not possible in the circumstances. I therefore think it desirable to abolish this definition, and to employ the enumerative method. Above all, a distinction must be made between

important waterways and those which are less important; and the provisions of Articles 2 and 3 concerning freedom and equality would be declared applicable to the latter alone.

These are the reasons for the amendments proposed by the Netherlands Delegation with the object of realising the principles of Article 23 of the Covenant relating to freedom of communications, and of Article 338 of the Treaty of Versailles concerning the internationalisation of navigable waterways.

M. PHOCAS (Greece; speaking in French). — The Draft Convention on Navigable Waterways which has been submitted to this Conference conflicts at the very outset with the principle of absolute freedom and equality as regards navigation on international rivers. Article 2, although it binds the participating States to grant free navigation on the international waterways placed under their sovereignty to the vessels of other participating States, contains, nevertheless, three restrictions of great importance,—in Articles 4, 14 and 16.

With regard to the restriction contained in Article 14, which refers to free navigation for warships, and which does not really come within the sphere of communications or commerce, we shall discuss it when we come to that article; but we think it essential that the attention of the Conference should be drawn immediately to the restrictions contained in Articles 4 and 16. We have here a question of principle. These restrictions, if adopted, would abolish the liberties already existing, — would, in short, render vain the internationalisation of rivers, and would constitute, not a forward step in the evolution of the international law on rivers, but a deplorable retrogression.

I need not read Article 4, as you have it before you. The article refers to the question of river navigation, and, although in the Report we are told (1) that, in drafting this article, the Commission had in mind, in particular, the special case of the River Amur, the persistence with which this article was supported by the European delegations on the Commission which prepared the *Green Book* renders its purport dangerous. It is true that the article in question lays down that any decision on the part of the members of an International Commission to refuse the right of river navigation to non-riparian States must be unanimous; this may be a weighty guarantee, but it is quite insufficient.

As all those who took part in the discussions of the Paris Commission of Enquiry will remember, and as is stated in the Report (2) on these proceedings, it was found impossible to reconcile the two opposing views, and this article was drafted as follows :

This Convention does not in any way affect the right of carrying out the local transport of passengers and goods between ports situated under the sovereignty or authority of one and the same State.

According to this article, therefore, the freedom of navigation on navigable rivers granted by our Convention does not extend to local transport, which remains at the mercy of political events and vicissitudes.

At the very moment when we are summoned by the League of Nations to guarantee freedom of communications on the basis of the liberal provisions inserted by the authors of the Covenant in the Treaties of Peace, we cannot conceive how it happens that we are faced with a Draft Convention which takes no regard of those provisions, since it introduces clauses abrogating the equality which has existed for a century between riparian and non-riparian States. If there be any one principle which should be inviolate, it is this very principle of equality, which was proclaimed a century ago, and which constituted the greatest progress in river navigation.

Freedom of local traffic is of very ancient date. It existed on many rivers before the theory arose that certain rivers which cross a number of countries should have a more liberal regime than that in force on national rivers, — a regime which should have regard to the interests of international commerce and exchange, interests which in no way conflict with the commerce of riparian States, but rather the reverse. Italy is

(1) See p. 421.

(2) See p. 421.

proud that freedom of navigation and local traffic on the Po dates back as far as the twelfth century.

After the Napoleonic Wars the closer union of France, England, Prussia, Russia, Portugal and Spain—the countries which headed the world-wide economic movement—was the cause of the insertion in the Treaty of Paris of 1814 of a clause dealing with one of the greatest economic problems of the time, that of freedom of navigation on all rivers which cross several countries. The problem is clearly defined in Article 5 of this Treaty, which reads as follows :

The navigation of the Rhine, from the point where it becomes navigable unto the sea, and vice versa, shall be free, so that it can be interdicted to no-one ; and at the future Congress attention shall be paid to the establishment of the principles according to which the duties to be raised by the States bordering on the Rhine may be regulated in the mode the most impartial and the most favourable to the commerce of all Nations.

The Congress of Vienna, which met a year later, concluded this task by giving it its present form and re-drafting Article 109 in the following manner :

The navigation of the Rivers, along their whole course, referred to in the preceding Article, from the point where each of them becomes navigable, to its mouth, shall be entirely free, and shall not, in respect to commerce, be prohibited to anyone...

These liberal terms, containing no restriction, are included in a Treaty signed more than a century ago, and they still govern the world as regards river navigation.

When, a few years later, the great Powers were contemplating the establishment of a genuine system of freedom of navigation on the Danube, they sanctioned the application of the principle as follows (1) :

The Act of the Congress of Vienna having established the principles intended to regulate the Navigation of rivers which separate or traverse different States, the Contracting Powers stipulate among themselves that those principles shall in future be equally applied to the Danube and its Mouths. They declare that its arrangement henceforth forms part of the Public Law of Europe, and take it under their Guarantee.

The Navigation of the Danube cannot be subjected to any impediment or charge not expressly provided for by the stipulations contained in the following Articles : in consequence there shall be levied no toll founded solely upon the fact of the Navigation of the River, nor any Duty upon the Goods which may be on board of Vessels. The Regulations of Police and of Quarantine to be established for the safety of the States separated or traversed by that River shall be so framed as to facilitate, as much as possible, the passage of Vessels. With the exception of such Regulations, no obstacle whatever shall be opposed to Free Navigation.

The principles laid down in the Treaty of Paris were greeted by everyone with satisfaction as marking considerable progress, a progress which had definitely been achieved and which could not be undone. Allow me to quote to you one of the eulogies in its honour :

The work of progress, of civilisation and of great political foresight represented by the Treaty of Paris has not only revived the beneficent principles of the Congress of Vienna of 1815, but is witness even to a far superior spirit of liberalism. It permits no restriction upon navigation on the Danube. It places the interests of non-riparian States upon the same footing as those of riparians, and thereby proclaims loudly and firmly the principle of fraternity of nations on international rivers.

The author of these words is a man of great authority, whose opinion is of the greater value to us as he is a Roumanian, and never forgets the interests of the riparian States.

Our eminent colleague Professor van Eysinga, in an erudite and particularly interesting pamphlet on the evolution of international river law, states that there are three rivers which may be regarded as factors in the development of International River Law in general, — the Rhine, the Danube and the Congo. If, said M. van Eysinga, differences arising from their own individuality are to be found in the regime of these rivers, on the other hand the principle of the complete equality of the freedom of flags is affirmed there in a most categorical manner. On the Rhine, navigation was and is as free for non-riparian as for riparian States; nothing was done by Articles 15

(1) See Treaty of Paris of March 30th, 1856, Article 15.

and 22 of the Act of 1868 to prejudice the complete equality of all flags, whilst Article 356 of the Treaty of Versailles lays down that :

Vessels of all nations and their cargoes shall have the same rights and privileges as those which are granted to vessels belonging to the Rhine navigation and to their cargoes.

This principle will doubtless be scrupulously observed by the Central Rhine Commission, which is to revise the Act of 1868.

In the Treaty relating to the Congo, Article 13 of the Statute of the river explicitly proclaims the principle of freedom of navigation for riparian and non-riparian States. As regards local traffic, non-riparian States will in no way be less favourably treated than riparian States; these provisions were recognised by the Signatory Powers as henceforward forming part of the principles of international law. As regards the Danube, we have already quoted the Treaty of Paris of 1856, which granted complete freedom of traffic. We desire, however, to point out that when, in 1857, Austria attempted to limit freedom of navigation on the Danube, her proposal was so unfavourably received that she was obliged to withdraw it.

This is the history, up to 1914, of the evolution of international river law as regards freedom of local traffic. Under conditions of free competition, local traffic developed on international rivers as well as on the national rivers of England and France, and, owing to the reduction in freight rates, navigation was thereby increased, whilst trade became more brisk and transport traffic to the sea increased the wealth of riparian States by imparting a stimulus to export trade.

The Treaties of Peace concluded at Paris in 1919-1920 mark a natural stage in the evolution of international river law. The Commission on Ports, Waterways and Railways, which drew up the provisions of Part XII of the Treaties of Peace, was unable, owing to lack of time, to draw up a general Convention; hence this task has been left to the present Conference. But the principles laid down in Articles 332-337 of the Treaty of Versailles are imbued with the spirit which animated this Commission,—the spirit of complete freedom and equality.

It was the object of the Treaties of Peace finally to embody in the statutes of international law the principle of freedom of transit and of navigation, and the abolition of all favours or preferential treatment with regard to communications. The Treaties were intended to elevate to a general principle the regime of freedom, which already existed in more than one State, to abolish restrictions everywhere in order to stimulate markets, to remove all hindrances to transport and to clear away the barriers which impeded the progress of world trade.

It will therefore be understood that, when the time came to lay down principles which should govern the regime of international rivers, the authors of the Treaties of Peace were anxious to do so as clearly and as emphatically as possible. Abandoning the restricted scope of the Treaties, the Peace Conference makes no distinction, in the first paragraph of Article 332 of the Treaty of Versailles, between Allied or neutral Powers and ex-Enemy Powers; all will have equal rights. I will quote this paragraph :

On the waterways declared to be international in the preceding Article, the nationals, property and flags of all Powers shall be treated on a footing of perfect equality...

In order clearly to define this equality and to prevent any erroneous interpretation, the following words are added :

...no distinction being made to the detriment of the nationals, property or flag of any Power between them and the nationals, property or flag of the riparian State itself, or of the most favoured nation.

It is true that there is an exception to this principle. In paragraph 2 of Article 332 of the Treaty of Versailles, and in the corresponding provisions of the other Treaties, the ex-Enemy Powers are forbidden to carry passengers or goods by regular services between the ports of any Allied Power. But this exception does not apply in any way to the Allied or neutral Powers. Moreover, according to Article 378, this stipulation is of a provisional nature, and only refers to one special kind of traffic. The terms of the Treaties make it quite clear that the nationals of the Allied or neutral States

have the right to effect local transport, not only by irregular, but even by regular, services,—that is to say, they cannot be subjected to any restriction. This is so clear and explicit that it is difficult to see how articles such as Articles 4 and 16 could have been included in the Draft Convention. The Treaty of Versailles lays down in Article 338 that the Convention to be concluded is to take the place of Articles 332 to 337, which contain the general principles governing the international regime of rivers.

It was therefore the intention of the authors of the Treaty that our Convention should be drawn up in order to regulate details, and to give a wider application to the principles, in question. It was certainly not their intention that these principles should be abolished by a Convention, and I cannot think that we have any right to go as far as this. It follows, then, that the provisions of Articles 4 and 16 are in absolute contradiction, not only with previous Treaties such as the Treaty of Vienna (1815), the Treaty of Paris (1856), the Treaty of Mannheim (1868) and the Congo Treaty of 1885, but also with the Treaties of Peace concluded after the Great War, which were ratified by twenty-eight States. They are therefore in contradiction with existing international law.

Can we take a step backward? Can we act thus retrogressively and abolish liberties which have already been gained? Is it conceivable that we should dream of allowing less freedom on international rivers than that which existed and which still exists along their course,—less freedom, even, than that which prevails on many national rivers? It is incredible that the Conference could do anything to prejudice these principles.

In conclusion, I apologise for having claimed the attention of the Conference so long. I have done so not only in order to defend the considerable interests of Greece in navigation on the Danube, but also for the sake of a much higher principle, and one of much greater importance than the particular interests of my country. The Greek Delegation demands the maintenance of principles already established, which have benefited and still benefit the whole world, and which are the origin and agents of civilisation as much for riparian as for non-riparian States. I have thus desired to uphold a principle bequeathed from the past and consecrated by a century of observance,—a principle which all the Powers who ratified the Treaties of Peace should vigilantly maintain intact.

The meeting adjourned at 1.15 p.m.

TWELFTH MEETING OF THE CONFERENCE

(Wednesday, March 23rd, 1921, at 6.15 p.m.)

GENERAL DISCUSSION (CONTD.)

M. Gabriel Hanotaux, President of the Conference, in the Chair.

GENERAL DISCUSSION (contd.)

M. Paolo BIGNAMI (Italy; speaking in French).—The Draft Convention which the Conference has to discuss, and which is more closely connected than the others with the important commentary which precedes it, deals with the international regime of waterways. It divides them into two categories,—international waterways, and waterways which are not defined as international. It is therefore essential to know what is understood by an international navigable waterway, and therefore to know, above all, exactly what constitutes a navigable waterway. The explanatory text of the *Green Book* says clearly (1) that a waterway is navigable if it is accessible from the sea to navigation of any kind.

We must state at once that so wide a definition is inadmissible, for it would include watercourses which are only accessible to navigation by small rowing-boats, but which are inaccessible to navigation of a regular character having for its object any commercial transport of persons or of goods which is of general concern. It must not be forgotten that this Conference is intended to solve certain extremely important problems regarding freedom of communications and transit, and it is clear that unimportant transport which obviously has no connection with international communications and transit, cannot be considered as coming under the terms of the Convention. We must admit the possibility that there may be international watercourses on which no form of navigation may be carried on, but which nevertheless form the frontier between two States. But in connection with communications and transit we are not concerned with all international watercourses, but only with those which are, or may become, important routes for communication and transit between peoples, whether they form a frontier between two States or whether they traverse two or more States. It is therefore necessary, above all, to draw a distinction between the kinds of watercourses with which we wish to deal,—that is to say, to lay down some kind of definition of a navigable waterway.

The Conference, in which a large number of eminent technicians are taking part, cannot overlook two important facts :

(1) The great development of railways during the last fifty years;

(2) The really marvellous utilisation of water as a source of power or for purposes of irrigation,—a practice which has developed immensely during the same fifty years.

In the various articles of the Convention and in the explanatory notes of the *Green Book*, it is very rightly stated (2) that the first characteristic of an international waterway is that it gives access from the sea,—namely, to some country further upstream which is separated from the sea by one or more States. It follows that the extent to which a nation is able to make use of a waterway for its communications will be determined, above all, by the technical conditions of the waterway itself. If these conditions are that the results of working the waterway are markedly inferior to

(1) See p. 420.

(2) See p. 417.

those of operating the railways, it will be practically impossible for the waterway to be used; the railways will be used in preference.

On the other hand, we all know the important discussions which have taken place even recently on the desirability of developing inland navigation at the present time, which is witnessing a marvellous development of railways in all parts of the world. From all these debates it is clearly evident that the first condition for rendering navigation possible is to be able to overcome the competition of railways by facilitating traffic for vessels of large carrying capacity. Some important treatises which have been written on this subject will not admit the practical utility of a navigable waterway unless it allows passage for vessels of at least 300 tons, and we have all heard of the plans which many civilised nations have carried out or formulated to provide navigable waterways for the traffic of vessels of 600 tons. We therefore consider it necessary to exclude from the navigable waterways referred to in our Convention those small waterways which only allow the passage of very small vessels, and for this purpose the Italian Delegation has proposed an amendment to Article 1.

If a different decision were taken,—and this appears impossible—that is to say, if it were admitted that a waterway may be declared international even if it does not allow of commercial traffic of any considerable importance, the effects would be most harmful. For in this case an international administration would be imposed on certain waterways which could never be *navigable waterways*, or which a downstream riparian State would never transform into a navigable waterway, for fear of creating an amount of traffic which would impose on it fresh obligations.

This is, in fact, admitted in the explanatory text of the *Green Book* itself. On page 67 (1) the following passage occurs :

There was reason to fear... that a State under whose sovereignty or authority this non-navigable part was situated would not proceed to carry out works of which not only, would the exclusive benefits not accrue to it, but which also might result in immediately and automatically placing the entire upper part of the river under the international regime in virtue of the definition.

The Conference should therefore be very careful, for fear of creating insurmountable obstacles to communications and transit by rendering difficult in the future the construction of works intended for navigation purposes. The wonderful use of water for hydro-electric installations, which is one of the characteristics of the development of modern industry, and which, by making possible the electrification of the railways, thus aids the progress of international traffic, makes States disinclined to allow the introduction of methods which might place obstacles in the way of this utilisation of water, without perhaps any corresponding advantage to navigation. The technique of hydraulics is most intricate, and the Conference should therefore take great care not to interfere with the natural development of any State, particularly countries which have no other natural wealth than that derived from water, and which are utilising their wealth both for navigation and for other purposes,—for example, as motive power, for irrigation, and to provide drinking-water where these are lacking.

With these necessary reservations, and whilst declaring that Italy has the firm intention of applying the principles of this Convention to her national waterways,—which she is at this moment in process of regularising at very great cost—the Italian Delegation intends to take active part in this discussion, desirous as it is of adding its contribution to a work which is both noteworthy and of general usefulness.

M. WIELOWIEYSKI (Poland; speaking in French).—Although the Polish Delegation is inspired by the principles of freedom of communications and transit and equitable treatment for the commerce of all Members of the League of Nations (Article 23 (e) of the Covenant), nevertheless, faithful to the attitude which it adopted when the Draft Convention on the International Regime of Waterways was discussed in the Commission of Enquiry on Freedom of Communications and Transit, this Delegation regrets that it is unable to agree with the interpretation which has been given to these principles by the authors of the Draft now submitted to the approval of the Conference. Far from seeing in this Draft the fulfilment of the great ideals of liberty and justice

(1) See p. 420.

which inspired the authors of the Covenant, the Polish Delegation has had frequent cause to observe, to its deep regret, that the basic provisions of this Draft are in conflict with those ideals. It therefore considers it impossible to attempt the consideration of the provisions set forth in the various articles of the Draft until, as a result of a discussion on the principles at issue, a general basis has been established upon which the various views could be reconciled in the best interests of all nations, both those which are represented and those which are not yet represented here. The Polish Delegation has endeavoured to adopt the point of view which determined the character of the Draft, but it is not convinced, and it is unable to admit, that the only means of realising the aims laid down in Article 23 (e) of the Covenant would be to accord to the subjects of all the States signatories of the present Convention the same treatment as to nationals. It is impossible to foresee all the consequences of an obligation so wide in its scope, which might create grave hindrances to the economic development of the riparian States; it is incompatible with the provisions of the Covenant of the League of Nations. It would, indeed, be unjust to compel the various States, whose economic conditions differ very widely from each other, to submit to such a uniform regime. To grant national privileges on all the navigable waterways which have hitherto been subjected to different regimes,—regimes adapted to actual conditions which in their turn vary, would be to favour those nations whose fleets and commerce have already attained a high degree of development, at the expense of those who can only hope to attain similar results by applying, in their turn, the method of treaties of commerce and navigation. This provision would, moreover, constitute an act of arbitrary intervention in the free competition between nations, as it would limit the rights of some for the exclusive benefit of others. Freedom, in the form in which the Draft Convention proposes to express it, would merely be the freedom of non-riparian States, acquired at the expense of the most legitimate interests of the riparian States. The Polish Delegation is ready to make any sacrifice or any act of renunciation which is really essential in order to organise international relations on a basis of liberty and justice, but it ventures to remind the Conference that one of the fundamental principles on which international relations are based is the principle of reciprocity. The Polish Delegation would therefore be unable to accede to a stipulation which, even if only in the form of a recommendation, included purely national waterways, since, in its opinion, the interests of all non-riparian Powers are, in a great measure, assured by the Convention on Freedom of Transit.

The Polish Delegation also ventures to insist on the necessity for maintaining the fundamental distinction universally recognised by international law between rivers which are common to several States and international rivers properly so-called; in respect of the latter, the Committee, which is composed of delegates of non-riparian as well as of riparian States, represents the interests of the international community. From the legal point of view, rivers which are common to and which cross or divide several States only concern these riparian States. The Polish Delegation could not ask the riparian States of a common river to renounce, in favour of all the other States, the right to dispose of what is their common property, and to allow the exercise of their rights to depend on the consent of all the contracting States. Common rivers are national rivers, and the sovereignty of the riparian State cannot be subjected to restrictions other than those arising from neighbourly relationship and from the necessity of allowing free access to the sea to land-locked States further upstream. In this case, also, the legitimate interests of the other States are completely guaranteed by the Convention on Freedom of Transit.

The Polish Delegation therefore proposes to insert in the *Convention on Navigable Waterways of International Concern*, as a recommendation, a clause similar to paragraph 1 of Article 108 of the final Act of the Treaty of Vienna :

Art. CVIII.—The Powers, whose States are separated or crossed by the same navigable River, engage to regulate, by common consent, all that regards its navigation.

The Polish Delegation would not see any objection to formulating, similarly, in the same article, as a recommendation and in a very general way, the bases for the Conventions which are to be subsequently concluded between the riparian States of common rivers. Moreover, the Convention the draft of which is now before to the

Conference should, in the opinion of the Polish Delegation, only contain general provisions specially applicable to international rivers, and these provisions should then be dealt with in detail and supplemented by the Navigation Acts relating to each international river. These provisions would, to some extent, form a statute which should be a standard for all international rivers.

The Polish Delegation reserves the right to propose such amendments as it may consider necessary as soon as the object of the Convention has been exactly defined as a result of the general discussion.

M. TSANG-OU (China; speaking in French). — Whilst associating itself in the most formal manner with the principle of freedom of communications as laid down in the Preamble of the Draft Convention, the Chinese Government finds itself obliged, in view of the present situation of China, to request that the discussion of the second paragraph of the Preamble, from the words *it being understood that* to the end, should be adjourned until such time as the Conference shall have defined the meaning of the international regime of navigable waterways.

If, indeed, the Conference decides that the Convention on the International Regime applies not only to international rivers of general concern (the Rhine and the Danube) but also to rivers common to several States, the Chinese Government believes that it would be necessary to extend the principle to national rivers, after careful consideration of each special case. In the contrary case,—that is to say, if the international regime is not applied to rivers of the second category,—the Chinese Delegation does not see the necessity of extending the principle to national rivers, at least in the majority of cases. For this reason it requests that the discussion on the second paragraph of the Preamble should be adjourned until the end of the discussion on the Draft Convention, when the Conference has reached a decision on the definition of international waterways. The Chinese Delegation reserves the right to make known its view with regard to the application of the present Convention.

M. SEELIGER (Germany; speaking in French). — Before so highly qualified an assembly it is unnecessary for me to express the interest which the German Government rightly takes in the discussion which has just begun on the General Convention on Navigable Waterways. You are aware that for more than fifty years Germany has left nothing undone in order to develop her internal navigable waterways, to construct canals and to complete her river system. The proof of this is contained in the statistics of her inland navigation transport. It was, therefore, with the greatest satisfaction that the German Government received and accepted the invitation which the League of Nations was good enough to transmit to it. This is not the moment, in the midst of a general discussion, to enter into the details of the question with which you are concerned. Allow me, nevertheless, to indicate in a few words the interest which the German Government takes in your deliberations.

It was the Treaties of Peace which established the internationalisation of certain great rivers, and which set up the International Commissions to administer them; the Treaties also laid down the general principles governing the administration of these rivers. These general principles are contained in Articles 332-337 of the Treaty of Versailles. But it is laid down in this Treaty that, should General Conventions on Navigable Waterways be concluded, the principles laid down in such Conventions shall hold good as regards the special acts which we are engaged in drawing up concerning rivers. We are therefore greatly interested in the results which will be produced by this Convention.

As regards the problem itself, the questions to be settled by the Convention are of great importance. Allow me to mention some of them. In the first place, as several speakers before me have already remarked, there is the question of definition. When a certain river in a certain country is internationalised, it is a question of some importance whether another river of the same character in another country should not also be internationalised. When certain rivers are internationalised which, from the point of view of navigation, have a less special character than others, it is inevitable that these others should also be internationalised. For there will always be States which will claim that, as regards the territories traversed by such a river, this river

is not so essential for purposes of navigation, but that it might be of great importance from the point of view of fisheries, hydraulic works, agriculture, and so on. I repeat, therefore, that the definition of the rivers to be internationalised is one of the most serious problems with which you will be confronted.

Quite rightly, you are about to establish freedom of navigation. The second problem now arises regarding the restrictions which you intend to establish. We have already heard another speaker on this subject. He said that these restrictions were inadmissible. In my opinion the Conference ought to adopt an intermediate policy by harmonising the interests of riparian States with the general interests of navigation.

You will also have to decide upon the nature of the international Commissions which you are setting up. A very difficult problem is involved in this question. You are well aware that an international Commission which administers a river always acquires certain rights normally belonging to riparian States. It is in this connection that there arises the question of the manner in which the rights of riparian States are to be defined. This is one of the most serious problems which you will have to solve,—a problem which has already given rise to great difficulties in the course of the discussions with regard to the Danube, the Elbe and other rivers, which preceded the present debates.

Then come purely technical questions, such as that relating to the collection of dues. Of course, we all desire that navigation shall be free and unhampered by those difficulties which we call dues. But you all know that in view of the present situation of the majority of States, and of our financial situation, this would be almost an impossibility. Provision must therefore be made as far as possible to ensure that navigation shall contribute to the expenses which it involves, if it is desired that navigable waterways shall be developed in such a way as to be genuinely useful for the purpose of transport.

In addition there is the question of works. How are questions connected with this problem to be settled? There is one very important question,—that of a State which refuses to carry out certain operations on the rivers which cross its territory, while other States represented on the International Commission are willing to perform this work. Is it possible either to compel that State to perform the work or to instruct another State to do the work on the territory of the first State? This is a very difficult question, which must be settled in a spirit of equity and moderation.

The last question to which I now desire to call your attention is that which arises in connection with nearly all the other problems to which we have referred,—the manner in which disputes are to be settled. We may have a firm intention to carry out the terms of a treaty which has been signed, but disputes will always arise regarding the interpretation and application of that treaty, particularly in respect of a Convention dealing with problems of so difficult a nature. A method of procedure must therefore be found to permit settling such disputes in a manner which will satisfy everybody.

I have ventured to refer very briefly to the many problems which you will have to solve, and which are of very special interest to the German Government. If the Conference wishes, the German Delegation is ready to collaborate whole-heartedly with you, and to place at your disposal the rich funds of its experience in matters relating to inland navigation. Should you wish it, we will supply you with any information and explanations which you may desire. In adopting this attitude, we believe we are fulfilling our duty to the League of Nations, which was good enough to invite us here; at the same time we believe that we are performing a duty which we owe to our Government by protecting the interests of our beloved country.

We earnestly hope that this Conference will allow its labours and its decisions to be inspired by the words of the well-known motto which has always been our watchword both for sea and inland navigation : *navigare necesse est*.

M. MULLER (Czecho-Slovakia; speaking in French). — Allow me to summarise the view taken by my Government with regard to the international regime of waterways.

The Czecho-Slovak Republic is situated on the line of the watershed of rivers flowing into three seas,—that is to say, the North Sea, the Baltic Sea and the Black Sea.

It is on its territory that the two important European rivers, the Elbe and the Oder, take their rise, and also several tributaries of the Danube. The regime of waterways in our State exercises a very important influence on these rivers in their lower courses, and particularly on the navigability of the Elbe. Before the war, it was this ancient waterway which united the Czech countries directly with the North Sea. Our traffic upon it amounted, on the Czecho-German frontier, to 4,000,000 tons. In addition, we had two indirect means of communication with the sea,—the first by the Oder, with transshipment at Cosel, in Upper Silesia, where the traffic amounted to 800,000 tons, mainly with Sweden; the second by the Danube, with transshipment at Linz and Vienna. After the war, Czecho-Slovakia was included amongst the States bordering upon the Danube, and obtained direct communication with the Balkans and the Black Sea.

Czecho-Slovakia, with its 14,000,000 inhabitants, depends for its production, to a great extent, on the possibility of obtaining raw materials and exporting its products. In order to compete in the world-markets, it is essential that it should be able to obtain cheap transport; the Czecho-Slovak State is therefore vitally interested in the utmost possible development of waterways. For this reason it is maintaining and improving its existing waterways, is endeavouring to complete the works which are now in course of construction and is preparing a canal system running in the first place from the Elbe and the Oder to the Danube, and possibly from the Vltava (Moldau) to the Rhine *via* the Main. Czecho-Slovakia does not possess any sea-board, but it now has access to the sea by the three great international rivers, the Elbe, the Oder and the Danube. At the mouth of the two first-named it has been guaranteed free zones under the terms of the Treaty of Peace, in the ports of Hamburg and Stettin, as a basis for its maritime navigation.

It is these circumstances which prompt the great interest taken by the Czecho-Slovak Republic in that freedom of navigation which is provided for in the Treaties of Peace; but it is essential to obtain guarantees that the principles governing this freedom will really be safeguarded. We think that it is in the international character of these rivers, and in the control of their administration by means of International Commissions, in accordance with special conventions drawn up in virtue of the Treaties of Peace, that this guarantee lies. The form to be given to these conventions should be that of the general Convention which our Conference is about to prepare.

The Czecho-Slovak Delegation can only repeat, then, with regard to navigation, what it has already said in a general way ever since the beginning of the work of the Conference,—namely, that the Czecho-Slovak Republic is well qualified, by its geographical situation, to appreciate the importance of free navigation, and that the Czecho-Slovak Government is prepared to accept the principles of the Draft Convention on the International Regime of Waterways drawn up by the Commission of Enquiry. In its report on this subject, the Commission of Enquiry tells us that the League of Nations will gradually give legal form to an International Code of Communications and Transit, of which the Conventions can only be the basis and the foundation. On behalf of my Government I express the sincere hope that this task may speedily prove successful.

M. Alejandro ALVAREZ (Chile; speaking in French). — Allow me to make a brief statement, from the point of view of the States of Latin America, on the question of the free navigation of rivers, in connection with the national and international policy followed by them in the matter during the last century.

As a result of the natural conditions governing the waterway systems of South America, the territorial divisions of the States, the enormous distances separating them, the difficulties of establishing means of communication by land, and their economic situation, the problem of free river navigation is of supreme importance for these States, and they have concluded numerous Conventions and passed legislation in an endeavour to solve this problem. These Conventions may be divided into the following three categories :

1. Friendly commercial and navigation treaties concluded either between Latin-American nations or between them and European Powers, in which stipulations have been made in favour of their respective nationals as regards reciprocal freedom of navigation on the coasts and rivers open to general commerce in their countries.

Treaties of this kind are unimportant, as they do not confer any special right on the nationals of the contracting countries. They are without any practical value, and are in reality nothing more than manifestations of goodwill and friendship;

2. Conventions concluded between two or more Latin-American countries which include provisions for the free navigation of national rivers, or of an international river flowing through the countries of the contracting States, such provisions applying only to the nationals of these countries;

3. Conventions in which stipulations have been made ensuring to the flags of all States — even non-riparian or non-American States—the right of free navigation on those parts of national or international rivers which cross the territories of the contracting parties.

Some States in Latin America, by their constitutions or their laws, have declared the navigation of their national rivers to be free and open to all flags.

At the first Pan-American Congress which met at Washington in 1889, and at which all the States of America were represented, the following resolutions were passed :

(a) *That rivers separating two or more States or flowing through their territories should be open to the riparian nations for the purposes of free navigation;*

(b) *That this declaration does not affect either the property or the sovereignty of any of the riparian nations, either in time of peace or in time of war.*

I will not detain you by explaining in detail the principles or policies which can be deduced from the Conventions laws of the South American States as regards the free navigation of rivers. I will lay these considerations before the Committee which the Conference will appoint for the investigation of this question. I should like, however, to point out, in passing, the contrast which exists between the European and American systems in this matter, the cause of which lies in the differences in the geographical and economic conditions prevailing in the two worlds.

In Europe, as a result of the density of the population, the limited extent of territory, the number of States which are crossed or separated by waterways, and the concentration of industrial and agricultural enterprises established in these regions, navigable rivers are of *universal* interest, and free navigation on these rivers is an imperative right for all, both riparians and non-riparians. This explains why, at first sight, America appears to be behind Europe as regards the conventions referred to in paragraph 2 above, and, on the other hand, why, in the conventions mentioned in paragraph 3, America is ahead of Europe. In America the interests of riparians are always predominant, and when they grant free navigation to non-riparians, it is not because they consider themselves to be granting a *real right*, the exercise of which could always be claimed by the non-riparians, but because they desire to grant them privileges which they themselves will control and which they may withdraw if they consider necessary.

From the short statement which I have made it will be seen that, in the Draft Convention which this Conference will prepare, there would be a manifest advantage in drawing a distinction between navigation on rivers which are *really international* and which are referred to in the Treaty of Versailles, and navigation on those which do not possess this character, because they chiefly concern the riparian States, as is the case with the rivers of America. Navigation may become entirely free for rivers belonging to the first of these categories, but as regards the second, the rights and interests of the riparian States should be taken into consideration.

M. Henri REINHARDT (Austria; speaking in French). — For us who have not taken part in the preparatory work of our Conventions, the *Green Book* is entirely new. I read the text of the annexes first, in order not to be influenced by the commentaries upon it. Permit me to say that my first impression on reading the Draft Convention was not favourable; there were too many vague phrases, restrictions, and reservations. But after having completed my perusal of the report, many of my fears and doubts were allayed. It is obvious that great difficulties have had to be surmounted, and, after due reflection, a more favourable view of the work is obtained. But it is due to the discussions of this assembly that we have been able to give thorough consideration to the matter, and to realise the purport of certain clauses and the widely differing conditions which have had to be taken into consideration.

A situation similar to that which arose upon the occasion of our deliberations on the Transit Convention will probably arise when we discuss the Convention on Navigable Waterways. At the beginning of the Conference we all declared that our greatest desire was to arrive at a satisfactory result, and never to lose sight of the ideal which should inspire us. To fulfil this duty will perhaps be more difficult in the case of the Convention upon Navigable Waterways than in that of the Transit Convention. Above all, we must not lose courage. Let us show by our attitude and by our diligence that our declarations were not mere vain words, and let us firmly resolve to make inevitable sacrifices in order to achieve our aim. We shall then have clear consciences, and we can return home with the firm conviction that we have inaugurated a new epoch, based, if you will allow me to say so, upon principles of altruism which will unite the nations by bonds of liberty and equality.

These are the sentiments which inspire the amendments to the Convention which I shall have the honour to submit on behalf of Austria. Their purpose is as far as possible to avoid restrictions and reservations, and to establish full liberty and equality throughout the field of our labours.

M. CHARGUÉRAUD (France; speaking in French). — It is obvious that the Draft of the General Convention on Waterways has not been received with equal favour by all the delegations; this does not surprise me. If you will read page 64 of the commentary in the *Green Book* (1) you will see that the French Delegation brought to the notice of the Commission of Enquiry instructed to prepare this draft scheme a proposal which, in the opinion of the Delegation, appeared to remove the difficulties with which you are faced to-day. This proposal was not accepted, it was considered to be retrogressive as compared with the conditions laid down by the Congress of Vienna.

No French Delegation, however it might be composed, could forget the history of the Treaty of Vienna, nor could it mistake the great ideas which dictated its first articles.

Our Vice-President, M. Adatei, in his brilliant statement, quoted to you the actual text of Articles 108 and 109 of the Treaty of Vienna, but he also quoted the memorable Declaration of the Executive Committee of the French Republic in 1792, upon which all subsequent documents relating to this subject are based. In the Commission of Enquiry we did not forget this history, and the proposal made was by no means reactionary. But as I see that several Delegations have accepted the idea put forward by the French Delegation, or have associated themselves with it at this Conference, I am supporting it again, and I hope to prove to you that its effect is not retrogressive.

What is laid down on this subject in the Treaty of Vienna, which, as M. Adatei has declared, is to be a torch to guide us? We may make two assertions. The first, to which M. Alvarez has referred, is that this Treaty only concerned engagements between riparian States. It was as regards themselves alone and between themselves alone that riparian States were bound. The second assertion is that this engagement did not contain any sanctions. Even if we had merely confirmed the provisions of the Treaty of Vienna, we should still be making considerable progress to-day, since, in order to secure respect for engagements already undertaken, we have formulated a whole procedure which will enable disputes between States to be settled. The Draft submitted to us aims at much more; and when I say more, I repeat the expression of our colleague M. Lely,—it aims at something altogether different. It aims at the establishment, in favour of all the States Members of the League of Nations, without distinction, of a servitude on all the rivers of the world which correspond to the definition contained in this first article: and this definition is the plaything of frontier-lines. Allow me to take an example which we have often used, and which will, I think, more than once recur in our discussions,—that of the River Amur. Supposing that China and Russia agree to place their frontier on the left bank, and that China remains sovereign mistress of the River Amur, she then has this river completely at her disposal. But suppose that they agree to place the frontier on the right bank, Russia, in her turn, and without intervention of any

(1) See p. 417.

kind, becomes absolute mistress, and may do with this river what she pleases. But if they place the frontier in the navigable channel of the river, any people whatever, from any region of the world, at once possesses rights over this river, and may say to the two co-riparian States : “You will not do this, but in future you will do that.” This would at once awaken susceptibilities which, however well they may be concealed, have already become evident in no uncertain manner.

What then are to be the guiding principles of the internationalisation of rivers? This matter has been treated very fully. M. Adatei has recalled some of the great discussions of the past century concerning the mouths of the Rhine, the Scheldt, the St. Lawrence, the Mississippi, the Rio de la Plata, the Amur and the Orinoco; and you have seen that the State which owned these river-mouths at that distant period invariably refused passage to up-stream States, and a struggle invariably took place between these riparian States. It was only the Treaty of Vienna which passed legislation in this matter, on the hypothesis that international rivers are the common property of their riparian States, and that the latter exercise common sovereignty over such property. In this Treaty they were compared with co-proprietors owning property jointly, and compelled to agree between themselves as to certain advantages, or to submit to certain mutual obligations. If, as M. Alvarez recalled just now, these States proclaim that their rivers are open to all nations, if they give notice that the riparian States are bound always to maintain the river in good navigable condition, it is between themselves that they undertake this engagement, and if other States desire to profit by it, it is in virtue of the power which this common sovereignty has granted them, and not in virtue of any right which they themselves might claim. Such was the governing idea of the Declaration of 1792 and of the Treaty of 1815; strife between riparian States had to be brought to an end. The word *riverain* comes from *rivaies* (rivals); riparian States are rivals, and it is always in the middle path that the difficulties of the position of a riparian State are encountered.

But another idea has been introduced into this matter which should have been kept apart from it, and on this point I think that the Conference will share my opinion. In certain cases it was desired to assimilate the waters of these international rivers to the waters of the sea itself. This is a confusion of thought which I consider inadmissible. A system of administration by which ships of every flag must be admitted in seaports should not depend on the situation of these seaports themselves,—whether they are situated within rivers considered as purely national or within international rivers. I consider, therefore, that we shall have completely to abandon this idea in our discussions in Committee. I make this remark because I believe that, in certain terms which occur in the Draft submitted to us, I see a reversion to this idea that the water of international rivers may be assimilated to that of the sea.

But if I have indicated which these international rivers ought to be, under the terms of the Congress of Vienna, I consider—as was indeed observed just now—that there are a certain number which should be placed apart from the majority of these rivers; I refer to those which have received a certain stamp as a result of historical or economic considerations or of certain provisions. Foremost among these rivers are obviously those referred to in the Treaty of Peace recently signed. No theoretical *a priori* definition of these rivers can be given; they are what they are, because they have been made so in the documents in which they are mentioned. It is therefore in a list of names that you must look for these rivers of greater importance, which I have termed, and still term, of general concern, in order to conform to the idea that it will not be the riparian States only, but other and non-riparian States, which will possess rights over these rivers. And I contrast them with those which I shall call of common concern, which are, like our local roads, of common concern,—those which possess an interest for the riparian States.

Where shall we find the statute for these rivers which are detached from the other class? It will be found in the general Convention which we are called upon to draw up. At the same time we shall have respected the legal principle which I have defined—namely that no one may claim rights or be subjected to obligations which are contained in a document which he has signed. All the Members of the League of Nations who sign the Draft Convention which we are to draw up will find in it all their rights and obligations regarding rivers of which they are not riparian States. In my opinion

it is for them in particular that the Draft Convention is to be prepared: it is these rivers which must always be borne in mind.

The Delegate of Germany has called your attention to the great importance involved in the terms which we introduce into this Convention. He was right, for it is here that we shall discover the general principles which it is essential to establish if we are not to find ourselves, as has happened before, at variance on common points of rivers like the Rhine, the Elbe, the Oder, and the Danube. It is in this Convention that we shall lay down the general rules governing such rivers. But this does not exclude the drawing up of special documents—indeed this was provided for in the Treaties of Peace—to regulate each of these rivers individually. At the last meeting it was pointed out that each river had its own peculiarities. It is in these special Conventions, the terms of which must not conflict with the General Convention, that these peculiarities will be defined.

To sum up,—if the Conference desired to adopt this point of view, it would give a mandate to the Commission which it appoints, to re-fashion, to improve, to adapt, if you like, the General Draft Convention submitted to it, on the following principles :

First principle : Two categories of rivers. — First Category : Rivers mentioned individually, for which the general Convention was primarily drawn up, and which we shall call rivers of general concern.

Second Category. Rivers of common concern, remaining under the exclusive sovereignty of riparian States,—to repeat the definition of the Treaty of Vienna itself—riparian States which will undertake to conclude between themselves agreements based as far as possible on the clauses which they have introduced into the general Convention in respect of other rivers.

Second principle : Settlement of disputes. — Disputes, whether, as with the rivers of the first category, they arise between non-riparian and riparian States, or, as with rivers in the second category, between riparian States alone, will be settled in the same way, in accordance with the procedure to be laid down in the Convention which we are preparing.

Admiral PRICA (Serb-Croat-Slovene State; speaking in French). — The opening up of rivers to all shipping is bound to meet with the approval of all nations. In order to apply this idea with perfect fairness, all States participating in this Convention would have to be similarly situated at the time of its coming into force. Seeing that all Members of the League of Nations are not equally well equipped to enter the field of economic competition, it is to be hoped that the conditions laid down in the present Convention will to some extent be adjusted in order to conform to the principles of equality and justice.

In the first place, we should not lose sight of the fact that the right of navigation on all international rivers will for many nations remain a purely theoretical right, whereas nations which possess great commercial traditions and large mercantile marines will profit by this right, and will apply it not only in theory but also in practice.*

In order to prevent nations whose commerce and shipping are in their infancy from feeling this contrast to too great an extent, measures will have to be taken to prevent their being deprived of the possibility of developing their own means of transport. With this object special respect should be paid to national waters and to rights of local transport. National waters should be left entirely under the administration of the riparian States, except as regards the indispensable needs of transit traffic, and local traffic and internal communications should be reserved to these States. They must also be accorded the right to select certain of their ports for preferential treatment. If these privileges were not granted to them, weak States would be in serious danger of speedily succumbing in the competition against old-established shipping companies and foreign capital. We must not forget that freedom of navigation also implies commercial rivalry. If in this economic struggle a State were to prove unsuccessful outside its own territory, it would only have itself to blame, but if it were beaten upon its own territory, it is obvious that the fault would lie with the Convention to which it has acceded. A riparian State throws

open to all comers all the rights which it possesses over its river, whereas a non-riparian State, in using of the river, makes no sacrifice.

In places where International River Commissions are to be set up, great tact will have to be exercised in order not to interfere unduly with the autonomy and independence of the riparian States, especially as regards the regulation and execution of works upon their territory, the inspection of these works, and so on.

As the movement of vessels of war abroad often has a political object, some restrictions must be applied to this right of almost unlimited navigation, since though, on the one hand, the appearance of such craft in foreign territorial waters might cause satisfaction, it might, on the other hand, produce a contrary effect.

The countries devastated in the world-war deserve to be treated in the Convention on Navigation with the same consideration as in the Convention on Transit.

In the present Convention we shall have to deal again, under heading 4, with the question of transit, and for this reason we much regret that the question of vessels has not been dealt with separately from that of their cargo, as we proposed at the time of the discussion of the Transit Convention (1). We hope that no misunderstandings will ensue,—for instance, that no State will treat a ship, sailing at a distance of one mile from its coast, as being in transit and demand payment of the tax for coast-lights.

The Serb-Croat-Slovene Delegation has presented certain amendments which are the natural outcome of this statement, and hopes that the Conference will give sympathetic consideration to these amendments.

M. MONTARROYOS (Brazil; speaking in French). — Brazil has long since attached special importance to the great question which now forms the subject of discussion in this Conference. You are, I am sure, aware that Brazil has a definite policy in this connection. This policy is the logical outcome of the liberal methods which Brazil has always pursued, under both Empire and Republic, with regard to jurisdiction concerning her navigable waterways. We attach special value to this policy, because it is calculated to enable the nations to put into practice the ideals which we are now striving to attain. The attitude adopted by Brazil in this discussion is therefore defined by the responsibilities arising out of her traditional policy. For this reason the Brazilian Delegation considers it its duty to make brief reference before this assembly to the principles by which it is guided, and which give a definite character to the attitude adopted by it in the debate which has now been opened with a view to improving the conditions of international navigation.

Allow me first of all, however, to declare that the Brazilian Delegation is determined to respect, as far as possible, the actual text of the Convention which has been placed before us, and also to state our reasons for so doing. We fully realise the difficulties with which the distinguished authors of the *Green Book* were faced. We know—although the issue is at times obscured—that they were anxious to remain faithful to the true spirit of freedom, and the highest tribute which we can pay them is to endeavour to find means of bringing our views into harmony with theirs upon points on which we and they are not in complete agreement. It is in order to facilitate the attainment of this object that we now propose to define the point of view adopted by Brazil.

Statement of the Problem.

Let us first of all try to state the problem clearly and precisely. In accordance with Article 23 of the Covenant, the question at issue is the application to navigable waterways of the principle of freedom of communications,—in other words, an international regime for waterways has to be established. In this question, as in all questions, especially those of a political or social nature, the first essential, if we are to avoid useless argument, is to agree upon the meaning of words; for instance, the creation of an international regime of waterways does not imply the surrender of national rights over them, nor must we forget that the phrase *internationalisation of rivers* may lead to misunderstanding, against which we must be on our guard. I need

(1) See *Verbatim Records and Texts relating to Freedom of Transit*, pp. 39, 203 and 222.

not dwell on this point; you will realize how important it is. The problem before us, therefore, is to establish an international regime for waterways.

In examining this question we must keep freedom of navigation constantly in view, and also bear in mind national sovereign rights. These are the essential conditions which characterise the problem before us. Its solution therefore consists in finding some means of providing for the natural exercise of the former, whilst duly respecting the normal operation of the latter. We are convinced that, by keeping these two aspects of the question ever before us, and by making the two conditions to which I have referred contribute to the solution in accordance with the legitimate claims of each, a solution will readily be found for the problem of the application to rivers of an international regime.

Freedom of Navigation.

From the point of view of freedom of navigation it is obvious that the question to be settled is that of the basis upon which this freedom rests, and the justification for it. I need not remind you of the doctrine adopted in this connection by the Congress of Vienna; you have heard it expounded in masterly fashion. You are aware, moreover, that the method adopted in the *Green Book*, subject to certain developments which are known to you, has been taken from the doctrine of the Treaty of Vienna. With regard to the Brazilian doctrine I may say that it is by no means a mere emanation of the Vienna doctrine. As a matter of fact the Brazilian doctrine is more liberal. We must, of course, take care not to confuse a general doctrine with the actual policy inspired by it. Between them lies the essential difference between theory and practice. The former consists of the whole body of more or less abstract and unchangeable principles upon which is based the special and definite action—sometimes of a temporary nature—which constitutes policy. Doctrine indicates the objects to be achieved; policy sets in motion the means—sometimes quite fortuitous—of obtaining them. The former goes straight to the point, the latter, unfortunately, is usually forced to follow a circuitous route. The essential point is of course that policy should never diverge too widely from the direct path leading to the object in view, and should never lose ground once it has made a step forward in the required direction. The ideal in the matter under discussion is to open all navigable waterways to all flags. The logical basis of this ideal, as you are aware, is the conception of international law with which you are also acquainted, and which is proclaimed by all leading jurists, more especially by Bluntschli, namely, that a navigable river which enters the sea is, in reality, only a natural prolongation of the free high seas route. In fact, from the practical standpoint, it is the universal interest and the utilisation of rivers which justify this conception. It does not, however, originate in an arbitrary idea that certain navigable waterways should be considered as international waterways, as laid down in the definition submitted to us. A river does not become international,—that is to say, does not lose its national character as an integral part of a country, simply because its utilisation is a matter of general interest to other countries. Moreover, the idea springing from definitions of this kind is wrong on two grounds. In the first place it restricts the application of the principle of freedom of navigation; and in the second, it encroaches upon the sovereign rights of States which possess rivers coming within this definition. It is quite clear how it encroaches on these rights; I referred to this point when I mentioned the national status of rivers, in accordance with which, normally speaking, their waters fall under the heading of territorial waters. With regard to the other difficulty which arises from the same definition, it is very easily demonstrated. It restricts the exercise of freedom of navigation because, as it only admits this right with regard to *navigable waterways* of the class under consideration, freedom of navigation can only be applied to navigable waterways crossing or separating two or more States. There are national rivers which are undoubtedly of greater international interest than certain rivers which flow through more than one country.

It is for this reason, for instance, that Brazil, having in view not only its individual interests, but also those of mankind as a whole, opened, of her own accord, the River San Francisco to international shipping, although it is a national river. Moreover

it may well be asked why riparian States should have less power over a common river than a single State over a national river.

You will perhaps reply that a river which separates two countries constitutes a species of natural route open to the respective friends of the two countries, and that the friend of one may possibly not be a friend of the other, and that in order to avoid misunderstandings and a certain amount of rivalry between two countries whose respective sovereignty extends to the centre line of the waterway, the *Thalweg*, it is better that such rivers should be open to all nations. This view is acceptable, and Brazil has admitted it, but this does not imply that the two riparian States are possessed of less power over this river than each one of them over one of its own rivers. The consent of the riparian States must be obtained before a river dividing them can be thrown open to foreign shipping. Should the riparian States wish to close this river, they should clearly be entitled to do so,—of course up to the time of the signing of this Convention.

With regard to rivers which pass through several States, we cannot regard them as international without coming into conflict with the theory which treats them exactly on the same footing as national rivers. In fact, each river of this kind is, as it were, cut into pieces, which are respectively incorporated in the territory of the States in which they are situated. For this reason, according to the Brazilian view, which takes into consideration all possible circumstances, common rivers are divided into two kinds: *boundary rivers*, that is to say, those which form a frontier, and *successive rivers*—that is to say, those which pass through several States without forming a frontier. The Amazon, for instance, passes through several States. That part of the river which passes through a particular State in reality constitutes a national river of that State. Such is the Brazilian view. In opening the Amazon to international shipping, Brazil in reality was animated by the same motives as in opening the San Francisco, a river which was entirely national. Brazil, in granting to other non-riparian States the right of navigation upon the Amazon, did not do so because this river was regarded in a different light from national rivers from the point of view of national sovereignty. It was governed by another consideration, which in the opinion of Brazil is the dominant consideration in this connection, that is to say the legitimacy and necessity of opening up the river for general use,—in other words general interests. The Amazon may, if you like, be regarded as an international river in the sense that during its course it belongs to more than one State. On this ground Brazil wished to conclude conventions with the other riparian States in order to afford them the right to use the principal portion of this great river; but the Amazon only became completely free to the shipping of all flags because Brazil, which holds the outlets to the sea, threw it open to the whole world.

The principle of freedom of navigation must therefore be accepted for reasons of universal utility. You are aware, however, that private interests often seem to clash with the general interest, because the former are only too often imperfectly understood. At all events this is the difficulty which prevents the application of this fundamental principle. In reality it is accepted by all, but private interests intervene, and the advantages which it offers are not realised. For this reason the question of freedom of navigation, although it is a matter of general interest, has not hitherto received the natural and complete solution which it deserves, and which the needs of civilisation demand; only partial and insufficient solutions have been applied to it. Further, the fear of dealing with the question as a whole led the authors of the Treaty of Vienna to pervert the very idea of freedom of navigation. In this way the Treaty of Vienna, in an attempt to establish this principle, sacrificed it to a certain extent, and limited its significance; it only retained it in so far as applying to so-called international rivers. You will perhaps say that Brazil also has not applied the general principle of freedom of navigation in its entirety; this is true. Its evolution has perhaps been slow. But that which has already been done will suffice to show you that what is required of Brazil at the present time in this Convention is conceded by her beforehand, provided, of course, that the Convention respects sovereign rights. If Brazil has progressed with comparative slowness towards the ideal which we have indicated, this is because she has been compelled to take into account a whole mass of inevitable and often contradictory conditions. She has been governed by two considerations;

in the first place she desired to affirm her wish to progress towards the ideal in view, and she has given many proofs of this desire. As conclusive evidence of her liberal tendencies I may cite the opening up of her great river, the São Francisco, which is a national river, to free navigation by all flags. The second consideration was to adapt her policy to international circumstances which were at times extremely difficult and beyond her control. These circumstances made it necessary for her to defend herself against the thinly-veiled covetousness of stronger nations, and she was obliged, in the interests of South America, to make provision for certain political possibilities. She could not therefore open her rivers to foreign shipping, but, as the dangers gradually diminished, she immediately threw open her rivers to all flags without waiting to be asked by anyone.

National Sovereignty.

Though she has never allowed herself to be dominated by ill-timed sensitiveness, Brazil has always exercised the same care in protecting her own sovereignty as she had displayed in regard to that of other nations. According to the Brazilian standpoint, no incompatibility exists between the free exercise of national sovereignty and the legitimate exercise of free navigation. There is no such thing as absolute freedom. A brief summary of certain obvious considerations will suffice to justify this view.

In the first place we must recognise that freedom of navigation does not imply that the State which accords it abandons its rights of jurisdiction and police over the rivers which it throws open to the flags of other States. None of the treaties concluded by Brazil, none of the decrees published by her in this connection, preclude the exercise of her sovereign rights over any of her rivers. There is no ground for supposing that any incompatibility exists between the exercise of free navigation and the free exercise of the sovereignty of the country.

The second point, which is of some importance, and which must not be forgotten, is that freedom of navigation must respect acquired rights. For this reason Brazil has never recognised the right of servitude in this matter. In granting to other countries the right of navigation upon her rivers, she has always acted of her own free will, and in no sense because she felt that it was a bounden duty arising from the principle of servitude; she has never admitted the application of this principle to any portion of the rivers flowing through her territory. I would call particular attention to this, because it was stated just now that the right of free navigation might be regarded as a right of servitude possessed by each nation over rivers belonging to other nations. We cannot accept this principle. Moreover, the Brazilian international policy in this respect is in complete accord with law in general. An attempt to set up an international regime for navigable waterways based on the right of servitude would be to confuse the political principle of territorial sovereignty with the legal principle of ownership, which are two entirely different matters. The sovereignty of a country over its territory cannot be regarded in the same light as proprietary rights over a territory, without leading to a strange confusion between constitutional and civil law. Brazil, therefore, has always upheld the theory which I have expounded, and has in practice always conformed to this theory. She has not granted the free use of her rivers to her neighbours for purposes of navigation because they possessed any right of servitude over a portion of the rivers in her territory. On the contrary, it is because these portions of rivers form an integral part of her territory, and are therefore completely under her sovereign control, that she has been able, by means of the exercise of this sovereignty, to allow her neighbours to use these rivers for purposes of navigation. She has also extended this privilege to all other countries because she recognised the general utility of this measure. Any conception of servitude, therefore, must be absolutely excluded from the question of freedom of navigation.

In this matter there is yet another point which requires attention. We must not only consider its general aspect; we must also consider it from the point of view of the private interests of nations adhering to the regime of freedom under consideration. As a matter of fact, due respect for equity, and the protection of private interests, are in no way incompatible under this regime. At the present day all countries thoroughly understand the advantages—egoistic if you like—to be obtained by opening

their rivers to world commerce. The question of free navigation, therefore, is not a purely altruistic one, and in recognising this principle we must acknowledge its usefulness; this is bound to facilitate the acceptance of the Convention now before us.

Finally, let us summarise the preceding remarks by noting that the international regime for navigable waterways, of which this Convention will constitute the charter, in no way implies that their administration will be internationalised. Such are the general principles upon which the solution of the problem which confronts us should be based. The Brazilian doctrine is founded upon them.

It now only remains for me to call your attention to two reservations made by Brazil in regard to the application of the principle of free navigation. There would be no need for me to dwell on this matter, after what I have said with regard to the principle of sovereignty, if I did not attach particular importance to explaining the significance of these reservations. The first concerns transport traffic on inland waterways. Under the Brazilian constitution this traffic is reserved for the national flag. Brazil therefore cannot renounce this right, but this does not really amount to a restriction of free international navigation, nor does it conflict with the principle according to which all navigable rivers form a natural extension of the free high seas route. The object of international navigation, as its name indicates, is to establish communications between ports belonging to different countries, and not—except incidentally—between ports belonging to the same State. Local transport traffic, on the other hand, is intended solely to meet the needs of trade between the ports of a given State. It is perfectly feasible therefore to acknowledge the legitimacy of reserving the right of local transport traffic to a State; such a reservation does not hinder vessels of all flags from maintaining communication between ports in the interior of a country and ports of another country.

The second reservation concerns navigation itself; but it is absolutely necessary to adopt this reservation, because, though it may restrict freedom of navigation for certain vessels, this restriction is in the interests of peace, the greater freedom of the world at large. I refer to the necessity for limiting the right of vessels of war belonging to one country to enter the rivers of other countries. The legitimacy of this reservation may readily be seen.

Such are the principles which govern the policy of the Brazilian Delegation at this Conference. A mere statement of them will suffice to enable us to affirm that our policy will be conciliatory in the extreme. It is indeed by mutual goodwill and mutual endeavour to harmonise our respective views—in short, to come to an understanding—that we shall be enabled to set up the new regime so eagerly sought by the world at large.

M. George POPESCO (Roumania; speaking in French). — The Roumanian Delegation is glad to be able to state that on this subject it is in agreement with the French Delegation. The drafting of a Convention on the International Regime of Navigable Waterways appears on the agenda of the Conference, and the Roumanian Delegation feels that it should state its views with regard to the preparation of a Convention of this nature. Generally speaking, an attempt to prepare a Convention applicable to all navigable waterways is a task which, if not altogether impossible, is at any rate one of extreme difficulty.

The nature of rivers varies extraordinarily from a technical, topographical, economic and political point of view. It is therefore impossible to lay down rules and formulæ which will apply to all waterways without distinction. Nature herself has created such great differences between the various rivers and streams that even mathematical formulæ cannot be universally applied to them. Each river possesses its own characteristics and a regime peculiar to itself. Thus the regime of the Mississippi could not be applied to the Danube, and the regime in force at the mouths of the Danube is incompatible with that in force at the mouths of the Rhine. The conditions of navigability upon the Amazon and the Amur are entirely different from those on the Danube and the Rhine. The political importance which characterises certain rivers is either lacking or of an essentially different nature in the case of other water-courses. Some rivers flow directly into open seas; other rivers would possess no international importance unless access to open seas, or access from such seas, were assured to them.

The political situation and the economic conditions of riparian countries constitute factors which must be understood and clearly stated—though this is a task of considerable difficulty—in order to harmonise all conflicting interests. In dealing with so complicated a problem, it may well be asked how an equitable and appropriate solution is to be attained. There is only one way, and that is to follow the recommendation contained in the Covenant of the League of Nations, namely, not to lose sight of the general principles which are bound to lead to freedom of communications and equitable treatment for commerce. This wise recommendation suggests the method by which a solution may be found of such a difficult question as the reconciliation of the interests of non-riparian and riparian States, while at the same time respecting the sovereignty of the riparian States and the rights to which they are entitled by international law. The degree of solidity, efficacy and permanence of the work which we have to prepare will depend on our fidelity to these principles. If we were to interfere unduly in the internal affairs of these countries, we should be departing from the wise counsel of the Covenant, and should seriously infringe their most sacred rights. A general Convention concerning freedom of communications on navigable waterways must only contain the main principles capable of general application, and must leave the regulation of the conditions peculiar to the navigation of each river to special statutes to be drawn up separately. The first aim of our Convention will be to affirm the right of navigation on all international rivers for the flags of all nations, whilst duly reserving the fundamental rights of the riparian States. The Convention must also include equitable principles calculated to reconcile the interests of all concerned, and must take into account the private interests and special conditions of certain riparian States.

The equitable treatment for commerce provided for in the Covenant implies that, from the point of view of equality, certain restrictions will have to be made, the nature of which is governed by the situation of certain countries and the special conditions prevailing in them. The principle of equality of treatment will naturally be considered from all points of view, regard being had, of course, to the special conditions of existence of certain countries. Obviously its application must be limited in such a way that the vital interests of any country will not be affected by it. If we confine the convention to certain very general principles, there will be no difficulty in applying these, by means of special statutes drawn up separately for each river, and we shall accomplish our own task with great rapidity.

If, on the other hand, we allowed ourselves to be enticed into other courses, even the great principles established by the Congress of Vienna in 1815, and by that of Paris in 1856, would be endangered. Let us be content, for the present, to deal with rivers of international concern, and leave to one side with rivers or river-systems of a purely national character.

Bearing in mind the foregoing considerations, Roumania, which has the greatest possible interest in the navigation of the Danube,—the most important river of Europe—controlling as she does its mouths, declares that, in conformity with the liberal policy which she has always pursued, she is prepared to agree to the internationalisation of this river on the basis of complete freedom for the flags of all nations, provided that due respect be paid to her sovereign and riparian rights, as established by international law.

Under these conditions, we are prepared to recognise that the Draft Convention, prepared by the Commission of Enquiry on Freedom of Communications on International Rivers, contains admirable principles which, to a very large extent, satisfy the legitimate interests of the riparian States.

Nevertheless, some modifications are required, to which we venture to call the attention of the Conference for its favourable consideration. In the first place it will be necessary to make clearer the wording of certain articles, which has given rise to conflicting interpretations in the Conference entrusted with the duty of fixing the regime to be applied to the Danube. These interpretations have induced some delegations to assert that the Draft Convention on Navigable Waterways, drawn up by the Commission of Enquiry, contains certain passages which are unintelligible and others which are useless. The Roumanian Delegation has thought it advisable to submit certain amendments more especially intended to make it clear that this Convention is not applicable to national waters.

As regards the definition of international waterways, the Roumanian Delegation would point out that, unless a clear, concise and accurate definition can be found, including neither more nor less than the matter to be defined, it would be better not to attempt a definition, since it would inevitably be a source of dissension, and perhaps even an element of danger. In that case the best plan would be to adopt the system of enumerating the objects to be defined.

Dr. Simon PLANAS-SUAREZ (Venezuela; speaking in French). — The legislation of Venezuela, which has always been inspired by the highest principles of liberty and equity, and I might even say of liberality, has kept all her seaports continually open to world commerce, and her national waterways, both rivers and lakes, have been thrown open to international shipping and commerce ever since 1817. The Orinoco is open from the sea as far as the Port of Ciudad Bolivar, and Lake Maracaibo is open as far as the port of the same name. Beyond these limits general navigation on Venezuelan waterways, as well as local transport, is reserved to the Venezuelan flag; that is to say, navigation on the Orinoco and its tributaries, from the Port of Ciudad Bolivar upstream as far as the frontiers of Colombia or from these frontiers down-stream to Ciudad Bolivar, is reserved to national vessels, and the same condition obtains for internal navigation and transit on Lake Maracaibo, and tributaries of this lake, as far as Colombian ports. Venezuela, however, although she has adopted the broadest and most liberal views on everything relating to the development of commercial relations with all the nations of the world, and has thrown her territory open to all forms of human activity, has had special regard to the interests created by her proximity with countries such as Brazil and Colombia, to which we are closely attached by historical and racial ties, by common ideals, and, above all, by special interests due to our situation in a continent where circumstances of the most varied description have led us to regulate the interests of our respective countries by agreements *inter se*, animated by generous sentiments of liberalism, freedom and loyalty. In pursuance of these principles and sentiments, we signed in 1859 a Convention with Brazil relating to commerce and river navigation, and took the initiative in entering into negotiations with Colombia with a view to concluding a treaty between the two countries, dealing with navigation on common rivers, commerce and transit, and based on principles of equity and mutual advantage.

Long before Article 23 *e*) of the Covenant came into existence, therefore, we had taken the necessary steps to accord that completely equitable treatment—equality—to foreign trade and to shipping in our country, and to grant equal terms to all flags and to goods of any origin, for we have only one scale of Customs tariffs.

With regard to navigation on our national waterways, we have been governed by the same principles, which I have already stated, and which have always occupied a high place in Venezuela's traditional policy; we have already opened them to a considerable extent, and we shall open them yet further to the utmost possible extent, subject to the limitations of navigation, to the requirements of national or international commerce or of transit traffic, to the vital interests of the country, to its security, and to any other circumstances connected in any way with what, in general terms, may be called fundamental national interests.

We have taken, and we shall continue to take, the necessary measures to develop to the utmost extent the spirit and practice of the principle of Article 23 of the Covenant, which is already embodied in our legislative traditions and in our existing treaties. Venezuela will gladly sign treaties relating to the navigation of the rivers passing through her territory, based on the principles of freedom and equity affirmed by this Conference; but these Conventions *inter partes* must conform to the mutual interests and the mutual requirements of the parties concerned, and must also maintain in their entirety the Republic's rights of sovereignty, jurisdiction and administrative autonomy.

M. BOCHKOFF (Bulgaria; speaking in French). — The Bulgarian Delegation, on behalf of the Government which it represents, accepts in principle the text of the Draft Convention on Navigable Waterways which is laid before us in the *Green Book*.

We have only a few small modifications to suggest, which will be transmitted to you as amendments.

The Draft Convention reserves to each of the High Contracting Parties the right of issuing the necessary regulations and taking the necessary administrative measures on the waterways referred to in Article 1 and situated under its sovereignty. It is most desirable that these rights should not be considered as *existing* rights, but simply as rights derived from the principle of sovereignty and authority over navigable waterways. Otherwise there will be a distinct temptation to interpret the text as though it implied, not ordinary rights but rights of servitude, over common property defined as international within the meaning of the present Convention, to the detriment of the sovereign rights of other riparian States.

Ever desirous of granting absolute freedom of navigation to all vessels flying any flag whatsoever, Bulgaria has always adopted the principles affirmed in the present Draft Convention, subject to the necessity of granting greater facilities, and reserving certain rights under certain conditions for vessels flying her own flag. Bulgaria, therefore, is most desirous that the Conference should adopt Article 4, 16 and 17 of the Draft Convention.

Whilst approving the ideas which guided the Commission of Enquiry in drafting the text of the second paragraph of Article 10, relating to the uniformity of the regulations for navigation and administration, the Bulgarian Delegation is of opinion that an understanding between the riparian States of a common navigable waterway with regard to upkeep and improvement, especially in the case of countries of which the navigable waterway in question forms a frontier, is most desirable, and we propose that an addition to this effect should be made to Article 9. Freedom of navigation and the upkeep of the waterways will be constantly hampered if a disinterested agreement does not exist between the riparian States with regard to the upkeep, improvement, administration and policing of such navigable waterways.

The meeting adjourned at 8.10 p.m.

THIRTEENTH MEETING OF THE CONFERENCE

(Thursday, March 24th, 1924, at 11 a.m.)

GENERAL DISCUSSION (CONTD.) — LIST OF MEMBERS OF COMMITTEE ON NAVIGABLE WATERWAYS

The meeting opened with M. Gabriel Hanotaux, President of the Conference, in the Chair.

GENERAL DISCUSSION (contd.)

The PRESIDENT (speaking in French).—I regret to announce that the French Delegate, M. Charguéraud, whose great competence and authority have, I am sure, been appreciated by the Conference, is somewhat indisposed and has had to leave this morning for Paris. I fear that we shall miss him greatly in our work, but we hope that the rest during the Easter vacation may enable him to return to the French Delegation. M. Charguéraud has asked me to inform the Conference of his absence. I am sure you will share our regret that he has had to depart at a moment when his work would have been of such great service to us.

M. ALVAREZ (Chile; speaking in French).—On behalf of the Chilean Delegation I beg to associate myself with the regret expressed by the President.

The PRESIDENT (speaking in French).—These expressions of regret on the part of the Conference will be entered in the records and an extract of them sent to M. Charguéraud.

We will now continue the general discussion on the Convention on the International Regime of Navigable Waterways.

M. RESTREPO (Colombia; speaking in French).—As it is the rule for the delegates of all countries represented here to make a summary of the present state of their legislation on communications and transit, and as the Venezuelan Delegate, our esteemed neighbour on our eastern frontier, made here a very clear and precise summary on the condition of freedom as regards transit and the regime of navigable waterways in his country, it would be well that the representative of Colombia should, in his turn, explain to you the system of regulations regarding navigation in his country.

Let me first of all quote, from a document which the Chilean Delegation has kindly communicated to me, the law of New Grenada, which was the name of Colombia up to 1860. This law is dated April 5th, 1852; the principal article reads as follows :

Dating from the promulgation of this law, the navigation of foreign steamships flying their own flag shall be free on the rivers of the Republic.

This is a very liberal provision, for Colombia has no real international rivers except those flowing eastwards—that is to say, towards Venezuela; the great Orinoco and the Catatumbo, the route by way of Lake Macaraibo, towards the Atlantic, opposite Curaçao, a colony which is well known to our Dutch colleagues. On the eastern side, Colombia is almost divided in two by the great River Magdalena, along which passes the greater part of the trade of the country. This river flows from north to south, and its principal tributary in the interior of the country is the Choco; further west we have the Atrato, in the platinum district of Choco, which acquired great importance during the war, for American writers and even authorities declared that the war was won by the platinum of the Choco. This is probably an exaggeration,

Mr President, which, it appears, enabled the American Air Force to display all its skill, and which was also used in the manufacture of munitions. In a very interesting economic pamphlet written by an American professor, reference is made to the mutual assistance between all countries, and it is there stated that since the mines of Russia were lost during the struggle for humanity, the platinum of the district watered by the River Atrato proved a very opportune aid to the belligerents. We may speak of this quite freely here because the great majority of us were the friends of the Allies.

After the Atrato comes the Isthmus of Panama. I do not wish to speak of this. If the Delegates of the United States were here I would engage in a small controversy with them on this subject; but they are not here, and one should never speak of the absent or the dead. We then descend towards the Pacific Ocean, for the shores of Colombia are bathed by two oceans, the Atlantic and the Pacific. On this slope there are some very important rivers—the San Juan, the Guapi and the Timbiqui. The French flag may be seen on these rivers. By virtue of a Colombian law, the German, French and English flags may be found on all our rivers, and the most important shipping company in the country is an English one. On the Guapi and the Timbiqui a French mining company sends out its vessels under the French flag as if it were in its own country. Colombia has gone very far in this matter. You, my esteemed colleagues, and delegates of all the countries of the world, have two or three centuries, perhaps, in which to progress with regard to freedom of navigation on your rivers; we, in the meantime, will sit down and wait for you.

Old Rabelais—I know of no more ancient author who has dealt with the subject—old Rabelais, who was not a navigator, but who was a man of genius, defined rivers as *moving roads*, that is to say, routes for the trade of mankind, for the mutual benefit of humanity. I know of no author before him who has lighted upon this admirable definition. Since rivers are *moving roads*. . . .

The PRESIDENT (speaking in French). — I am very sorry to interrupt you, but allow me to say that the phrase is Pascal's. However, as Rabelais was a very great genius, he probably said it too.

M. RESTREPO (Colombia; speaking in French). — Rabelais belonged to an earlier century than Pascal, and if the phrase occurs in Pascal, that is because Pascal repeated it, and invested it with his authority as a great philosopher. The success of the phrase is probably due to the pen of that great thinker Pascal; but old Rabelais said it, and he has said some excellent things on the subject of communications between mankind, a subject which we are studying here. Since streams and rivers are *moving roads*, humanity ought to be free to traverse them and make use of them for its business. Unfortunately we find man saying : Rivers are integral parts of the territory and sovereignty of every State, and it is the duty of every State to defend them.

Allow me to summarise shortly the history of communications in that part of South America which I represent.

South America was in the first place discovered, conquered and colonised by the Spaniards, and subsequently by the Portuguese, who went there after Columbus. They soon began to quarrel amongst themselves as to who should rule over the great continent which had been discovered. Then they appealed to the Pope. At that time the Pope was, and, I may say, still is, the greatest moral authority in Christendom, and by means of a Bull promulgated *urbi et orbi*, he gave certain territory to the Portuguese and other territory to the Spanish, and three treaties were drawn up in order to define this division made by the Pope. It was during my study of this historical episode that I discovered the principle—which was, moreover, universally recognised—that when a river is intersected by the boundary-line of solid territories, high posts, boundary stones and landmarks were set up in conspicuous positions. Just as to-day electric standards are marked *Danger*, at that period people said : “Beware! If you cross the Portuguese boundary in the direction of the Spanish boundary along the River Amazon, for example (the greatest river in the world) you will do so at the risk of your life.” Those who crossed the frontier-lines were treated like smugglers or bandits who have invaded a neighbour's territory. These posts are still in existence in the immense forests of the Amazon, perhaps in order to recall the ideas which prevailed

at that time with regard to navigation. Long afterwards, in order to gain our independence, we made a revolution against Spain and Portugal. The Republics then took steps to regulate questions of transit, communications and navigation. Colombia accorded absolute freedom on those rivers to all the flags of the world, and all the ports of the Republic are open to the ships of the whole world. Vessels arrive there belonging to more than twenty companies—French, German, English, American—and receive a most cordial welcome. Other republics have not acted in the same way, especially those which own the mouths of rivers at their junction with the sea. We are riparians of the Orinoco, as was recognised here by Dr. Planas-Suarez, from the junction of the tributary Meta as far as the Guaviare, which are enormous rivers, although seen from here they look like mere wire threads. Nevertheless, we who dwell upon the banks of the Orinoco are not entitled to navigate thereon, owing to the opposition of Venezuela. We have never wished, and never shall wish, to draw the sword against our dear sister and neighbour who gave birth to Bolivar, that soldier of humanity with his extraordinary mental ability. He spent the best years of his life in Colombia, and died there, as he had wished to do. He honoured us with his friendship, and won back all the territories of South America. Since 1833 our situation and that of Venezuela have remained the same.

In 1830, Bolivar's creation, known as Greater Colombia, which consisted of Venezuela, New Grenada and Ecuador, disappeared as a result of the revolution brought about by Venezuela. The Republic was divided into three; its component parts, which before the Republican era were political entities, with their own administrations, have recovered their individuality, and are now Venezuela, Colombia and Ecuador. Venezuela forthwith sent us an admirable statesman, M. Santos Michelena, in order to conclude between the two States, now separated, the first treaty of friendship, commerce and navigation. This treaty was approved by Colombia, although it deprived that country of immense tracts of territory, which were ceded to Venezuela. But Venezuela, which had been considering this treaty for years before 1839, refused to approve it. We have been made acquainted with the reports of the Venezuelan Congress Commissions; these reports were published by M. Michelena, the son of Don Santos, who, as his father's biographer and historian, had access to the archives of the Venezuelan Congress, and saw the reports hostile to the treaties concluded by his father, although he knew that these treaties were designed in the interests of liberty, and in order to safeguard the interests of the Republic of Venezuela. He published these reports, which contained the following statements : Colombia cedes this or that territory in exchange for the rights of navigation and transit, in particular on the Maracaibo and the River Catatumbo, which, like its tributaries, has its source in Colombia and then forms Lake Maracaibo, finally reaching the sea opposite Curaçao. The reports then added that Colombia possessed three provinces which required transit traffic through Venezuelan territory, and also Venezuelan shipping, and that Colombia did not grant enough in exchange for the right of navigation, because if Venezuela refused transit, the four Colombian provinces of Tunga, Socorro, Pamplona and Casonaro would make revolutionary manifestations against the Government of Bogota in order to claim this freedom, and Venezuela would obtain additional territory and advantages. The treaty was therefore not approved by Venezuela, and we are still discussing with that country the right to pass, not through any appreciable part of her territory to injure her in any way, but along rivers which belong to us, such as the Zulia, the Saramata and the Catatumbo, and also the right to follow this route as far as the sea.

There is a question which concerns not us alone, but also our friends the English. The English possess, opposite the mouth of the Orinoco, the Island of Trinidad, one of their richest and most important colonies. Can Sir Hubert Llewellyn Smith tell us if a single English vessel has ever gone up the Orinoco? Never. Navigation on the Orinoco is absolutely closed and hermetically sealed, and the Orinoco and the Amazon are the most important rivers in the world. That concerns you all. You may ask what concern you have with the question of the Catatumbo and Lake Maracaibo. They are only a way out of Colombia, and you say to yourselves, "They are sure to find a way out one of these days." But the Orinoco concerns England, the United States and all countries which carry on commerce in all parts of the world, because the Orinoco rises almost in Brazil, and is connected with the great Rio Negro,

a tributary of the Amazon, by a superb natural canal called the Casiquiare, which, as regards navigation, is equal to the sea.

These two great rivers, connected by this Casiquiare canal and by the Rio Negro, thus form the largest system of waterways in the world. This admirable route, which connects almost all the countries of South America, has been closed to mankind by the egoism of Venezuela. I call your attention to this fact. The Delegate of Venezuela has spoken so admirably of the freedom of the conditions in his country at the present time—and it is a great country, richly endowed by nature—that I hope that he will sign the Convention on Navigable Waterways and also the definition of international rivers. If he signs this Convention, and if his Government afterwards approves, I shall be the first to sound the praises of the great Venezuelan Government, which of its own free will has opened the most wonderful and admirable waterway that the Creator of Heaven and Earth has ever given to humanity for purposes of transport. At present, I repeat, this waterway is hermetically sealed. *Ne muscae quid*, as the sentinels of Caligula said,—a fly itself could not pass.

This must be changed, and I am pleased to see that delegates like M. Planas Suarez are prepared to sign the Convention and even to improve it. When this has been done, we shall put away our little home quarrels and rejoice together for the freedom which has at last really been established amongst all nations of South America.

M. PLANAS SUAREZ (Venezuela; speaking in French). — I have listened with great interest to the Colombian Delegate's speech, but I much regret to say that, though he has stated a case against my country, I cannot reply to it here, because I think that we are here, to discuss not the private interests of two countries, but matters which concern all the countries of the world. Moreover, my Government has not instructed me to deal at this Conference with its affairs with Colombia. However, I have the honour to inform the Conference that I will set forth the Venezuelan point of view clearly in a report, which will deal both with international and national law on the subject.

The PRESIDENT (speaking in French). — I need not say that the League of Nations listens with equal impartiality, and with an equal desire for conciliation, to the statements presented by the delegates of different countries.

M. Emil DE WALTER (Hungary; speaking in French). — As is well known, Hungary, on account of her geographical situation, carried on an intensive development both of river and maritime navigation. The length of the navigable waterways of the country was 3,502 kilometres, of which the Danube represented 1,001 kilometres and the Save 602 kilometres. The length of these navigable waterways is now only 1,400 kilometres, and the length of the Danube in Hungarian territory 384 kilometres. As a riparian State of this, the greatest river in Europe, which enables Hungary to reach, on one side, the Black Sea, and on the other, Western Europe, she must attach very great importance to ensuring that conditions and measures tending to guarantee freedom of navigation for all nations on a basis of equality and reciprocity should be regulated in the most liberal and equitable manner. The questions with which she is chiefly concerned are the internationalisation of certain navigable waterways, the problem of tributaries and that of local transport traffic; a conflict of interests may arise with regard to these questions, but I hope that the wisdom and experience of this high assembly will settle these questions also in a manner which will take account both of the common interest and also of the vital interests of my country. As regards maritime navigation, I have the honour to state that, in the port of Fiume, the value of goods imported in 1913 was 213 million crowns, and that of exports 265 million crowns; these facts clearly demonstrate the great importance of this port for Hungary. We hope that the free access to the Adriatic Sea, granted to Hungary by Article 294 of the Treaty of Trianon, the Convention on Freedom of Transit, the agreements to be concluded with the sovereign State of this port, and the Convention on Freedom of Navigation, will make it possible for Hungary to build up again, at least in part, her maritime traffic,—a hope which is justified by the enclaved situation of the country. It is for this that I beg you to give us your gracious support.

Sir Hubert LLEWELLYN SMITH (Great Britain). — May I first of all express my very great regret at the loss which the Committee on Navigable Waterways will suffer from the temporary absence of M. Charguéraud, and my earnest hope that, if he rests through Easter, he will later be able to give us his valuable collaboration on a subject in which he is a past master.

I shall occupy very few minutes of your time—I should in fact have been content to be a silent listener to this very interesting debate—had I not feared that the silence of the British Delegation on a subject which so greatly concerns the commerce and shipping of the British Empire might possibly be misunderstood. Naturally the British Empire approaches this question of Navigable Waterways primarily from the point of view of its commerce and shipping rather than from that of a riparian State anxious to safeguard its sovereign rights. This does not mean, however, that we do not fully recognise, and are not anxious to meet, the difficulties, both theoretical and practical, which are present in the minds of the representatives of States through whose territory flow the great international rivers. We feel that nothing could be more disastrous than that this Conference should, so to speak, split into two parties,—the outside traders, anxious to penetrate the inland waters with their ships and wares, and the riparians, anxious to preserve their waters from such intrusion. On the contrary, we must all work together in this matter, and then we shall doubtless find a solution which will conciliate all interests and points of view, and respond to the general interests of the world. But as most of this debate—after the brilliant explanatory statement of our Vice-President, M. Adatci, on which I take this opportunity of offering him my most sincere congratulations—has been occupied by statements of practical difficulties, I should like to emphasize the fact that it is absolutely essential that any Convention which we may eventually conclude shall in its final form be a real step forward towards greater liberty; the Convention must not leave matters where they are, still less should it mark a step backward in the direction of greater restrictions. It is by that test, and that test alone, that history will judge of our work and pronounce it a success or a failure. As our Vice-President has said, we are here to complete, or at least to continue, the work begun by the Congress of Vienna, and we can be content with nothing less. I have said frankly that the interests as well as the sentiments of the British Empire are in favour of the principles of this Convention. But I venture to add that our own interests in this matter are, we believe, those of the world generally, and particularly of the landlocked States whose number has been so much increased by the recent peace settlements. In our judgment, it would be the height of folly for any of those States to adopt a restrictive policy as regards the navigation of rivers on which they are absolutely dependent for direct access by water to overseas markets. In the long run their interests must be the same as world interests, that is to say, contact between their territories and the outside world should be as close and as unrestricted as their geographical position permits.

Given these general principles, we are fully prepared to consider with an open mind any form of words which will give effect to them. We are not wedded to any particular form of definition, if a better one can be devised. Up to the present the British Delegation does not propose to suggest any improvement in the definition clause as it appears in the *Green Book* (1), except by the introduction of certain words, in order to meet a particular point which is of special interest, I think, to the Italian Delegation. But if anyone else can produce a form of words which is preferable, we shall, I repeat, approach it with an open mind, only stipulating that it must not have the effect of either destroying or seriously impairing the virtue of the Convention.

We are quite prepared to go far to recognise and safeguard the rights of riparian States, but we are not prepared to leave ourselves entirely in their hands. We cannot accept, without some reservation, the proposal, however attractive it may appear superficially, which lays down that any rights possessed by one sovereign State on one purely national river must necessarily be possessed by a collection of riparian States, through whose territories an international river passes. In this matter we must draw a clear distinction between the establishment of the general principle of free navigation, and the administrative responsibility for carrying out the measures

(1) Article 1 of *Draft Convention on the International Regime of Navigable Waterways*. See p. 417.

necessary to give effect to that principle. Broadly speaking, these administrative measures—apart from exceptional cases—are the function of the riparian States. But the laying down of principles is a matter which cannot be left to their unfettered discretion, if for no other reason than that a collection of States can only act either unanimously or by a majority; for in either case a land—locked State may find that its vital interests, which, in this matter, as I have said, are identical with the general interests, are left wholly at the mercy of its co-riparians.

Let us, then, in this Convention, adhere to general principles, for, if we do, I am confident that the Conference, which has successfully dealt with the intricate questions arising out of freedom of transit, will not fail to deal in a similar spirit and with equal success with the question of international waterways.

M. DE MADARIAGA (Spain; speaking in French). — I will say one word only, to make clear the point of view of Spain with regard to this question. In principle, and except in particular cases to be investigated in detail, Spain adheres to the view which has been expressed by the Polish Delegate, discussed in detail by the Chilean Delegate and admirably defined by the eminent engineer who has spoken in this debate on behalf of France. Whilst recognising that an international regime is necessary for certain rivers which have become great historic routes, the Spanish Delegation considers that such a regime is not justified in the case of other rivers, where the sole reason for their being brought to the notice of the Conference is that they are crossed either transversely or longitudinally by the line—often a purely abstract one—of a frontier. As regards these rivers, Spain is of the opinion that, in most cases, an agreement between the riparian States would be sufficient to satisfy the States directly concerned, whilst the interests of the other States are amply protected by the Convention on Transit which we have just discussed.

The PRESIDENT (speaking in French). — The general discussion is closed. The special Committee appointed to examine the Draft Convention on the International Regime of Navigable Waterways will now begin its labours. I will ask the Secretary-General to read the list of Members of this Committee.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The Committee will be composed of the following Members :—

<i>Albania</i>	MM. Midhat FRASHERI.
<i>Austria</i>	REINHARDT.
<i>Belgium</i>	PIERRARD.
<i>Bolivia</i>	Trifon MELEAN.
<i>Brazil</i>	E. MONTARROYOS.
<i>British Empire</i>	Mr. H. O. MANCE.
<i>Bulgaria</i>	MM. BOCHKOFF.
<i>Chile</i>	ALVAREZ.
<i>China</i>	T. H. CHEN.
<i>Colombia</i>	RESTREPO.
<i>Cuba</i>	E. MORENO MERLO.
<i>Czecho-Slovakia</i>	M. B. MULLER.
<i>Denmark</i>	N. J. Ehrenreich HANSEN.
<i>Esthonia</i>	Walter ROSENTHAL.
<i>Finland</i>	Rolf THESLEFF.
<i>France</i>	CHARGUÉRAUD.
<i>Germany</i>	SEELIGER.
<i>Greece</i>	PHOCAS.
<i>Guatemala</i>	N GALVEZ S.
<i>Haiti</i>	Luis Maria SOLER.
<i>Honduras</i>	N. GALVEZ S.
<i>Hungary</i>	WALTER.
<i>India</i>	Sir Louis KERSHAW.

<i>Italy</i>	MM. P. BIGNAMI.
<i>Japan</i>	KASAMA.
<i>Latvia</i>	G. ALBAT.
<i>Lithuania</i>	V. SIDZIKAIUSKAS.
<i>Luxemburg</i>	LEFORT.
<i>Netherlands</i>	C. LELY.
<i>Norway</i>	G. SMITH.
<i>Panama</i>	E. HASERA.
<i>Paraguay</i>	Dr. H. VELASQUEZ.
<i>Persia</i>	MM. HUSSEIN KHAN ALAI MIRZA.
<i>Poland</i>	BOLDAN WINIARSKI.
<i>Portugal</i>	A. FREIRE D'ANDRADE.
<i>Roumania</i>	George POPESCO.
<i>Serb-Croat-Slovene State</i>	Admiral PRICA.
<i>Spain</i>	Jimeno LASSALA.
<i>Sweden</i>	HOERNELL.
<i>Switzerland</i>	CARLIN OF VALLOTTON.
<i>Uruguay</i>	B. FERNANDEZ Y MEDINA.
<i>Venezuela</i>	Dr. PLANAS SUAREZ.

The meeting adjourned at 12.35 p.m.

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PART II

DISCUSSION IN COMMITTEE

(Dr. MINEITCIRO ADATCI IN THE CHAIR)

OF THE

DRAFT CONVENTION

ON THE

INTERNATIONAL REGIME OF NAVIGABLE WATERWAYS

FIRST MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Wednesday, March 30th, 1921, at 10 a.m.)

CHAIRMAN'S SPEECH — GENERAL DISCUSSION

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

CHAIRMAN'S SPEECH

The CHAIRMAN (speaking in French). — It is a very great honour both for me and for my native country to be called upon to preside over your labours, destined as they are to become historic. At the same time I fully appreciate the perilous responsibility which this task involves. Allow me at the outset of our task to express the confident hope that everyone of us will do everything possible—and even impossible—to sacrifice his own interests, in order to arrive at a common ground of agreement, and that we shall, within a very short span, be able to draw up a text which will meet the wishes of public opinion throughout the world.

Our task is certainly one of extreme difficulty; the difficulties will probably be even greater than those which we encountered in the drafting of the Transit Convention. In that we had for our guidance the provisions laid down in ordinary commercial and navigation treaties concluded between us. Here, on the other hand, we are obliged to break new ground, to sound unknown depths, to humour the legitimate interests of the riparian States and to keep constantly before us the interests of mankind as a whole. It is a difficult task, requiring conciliation on every side. Let us boldly confront the problems entrusted to us for solution and deal with them frankly, clearly, soberly, and, above all, let us approach them in a thoroughly conciliatory spirit.

Allow me to make a few suggestions as regards our method of procedure. In order to save time, it seems preferable that no translations should be made from French into English, or vice versa, unless this is specially requested. Everyone here understands the two official languages of the Conference. The votes of the Committee are not final; the delegates should, however, undertake full responsibility, in order to avoid undue subsequent modification of the votes cast. In order that the record of our work should be as accurate as possible, I think that for each vote taken the Secretariat should mention the names of the delegates who vote, either for or against, and also of those who abstain. By this means, the Conference, which will soon be going into Committee, will obtain a clear grasp of the manner in which our work has been carried out. These are the points to which I desired to draw your attention and obtain your agreement.

GENERAL DISCUSSION

The Chinese Delegation has requested that the discussion of the Preamble should be postponed (1). As was to be expected, many delegates desire that the discussion upon this question should be postponed to a later date.

(1) See end of this meeting, pp. 48-49, amendments proposed to the Preamble.

The fundamental question in this Convention is the examination of the two systems before us. A large number of our colleagues may remember that at Paris we had serious doubts as to the system to be adopted in the drafting of a convention on navigable waterways. We first of all contemplated the system of definition; then we temporarily abandoned this for the system of enumeration; and after about three weeks we returned to the system of definition, and agreed—in Paris, at least—that this was the best and most practical system. The Netherlands Delegation, the Roumanian Delegation, and several others, now put forward very sound arguments in favour of the adoption of the system contrary to that embodied in the Draft contained in the *Green Book*, that is to say, the enumeration of all rivers throughout the world in accordance with certain indications to be settled by us.

The best means of enlightening the Members of the Committee will be to ask to speak first the representatives of those delegations which have submitted amendments completely altering the basis of the Draft.

I call upon M. Lely, the Netherlands Delegate.

M. LELY (Netherlands; speaking in French). — We are entrusted by the Covenant with the duty, in the first place, of introducing freedom of navigation, and, in the second place, of preparing a Convention relating to navigation on a certain number of rivers, in accordance with Article 338 of the Treaty of Versailles. It is to our interest to bring about freedom of navigation and equality of treatment. Freedom of navigation is capable of realisation everywhere; internationalisation of rivers and navigable waterways involves many more difficulties. It is impossible to give effect to it everywhere.

The first paragraph of the Preamble refers to the application of Article 23 of the Covenant. The second paragraph refers to an entirely different matter; it states that the High Contracting Parties desire to apply the principle of internationalisation to all waterways as far as possible. Is it desirable to internationalise all waterways, including those situated entirely within the territory of a single State? The result of internationalisation would be to provide freedom of navigation and equality of treatment; but it would be attended by other consequences,—it would involve an obligation on States to undertake works upon navigable waterways, and would give States the right to carry out public works for the improvement of navigable waterways upon the territory of other States. This is at present impossible; moreover, it would entail the appointment of river commissions for the settlement of disputes. Is it desirable to adopt a Convention resulting in the creation of river commissions for every river or navigable waterway? What is the use of appointing a hundred or perhaps two hundred river commissions? In our opinion all waterways should not be internationalised. Freedom of navigation and equality of treatment should be accorded on all waterways; only certain rivers or canals of extreme importance, not to riparian States alone, but also to other countries, should be internationalised.

I will now read to you the amendments proposed by us for the reasons I have stated :

That part of the first paragraph of the Preamble beginning with the words *do hereby enact* to read as follows : *do hereby enact the following provisions*, and the second paragraph to be deleted ;

Article 1, paragraph 1, to be worded as follows : *waterways the navigation of which has been declared free either by virtue of the Final Act of Vienna or by a special navigation act* ;

Article 2 to be worded as follows : *subject to the provisions contained in Articles 4 and 16, each of the High Contracting Parties shall accord the free practice of commercial navigation to vessels flying the flag of any one of the other High Contracting Parties on all the waterways situated under its sovereignty or authority* ;

The words *on such waterways* in Article 3 to be replaced by the words *on the waterways referred to in Articles 1 and 2*.

The effect of this would be to deal in the first place with the general question of freedom of navigation on all waterways, and subsequently with the internationalisation of certain waterways of general concern to all countries.

M. POPESCO (Roumania; speaking in French). — The Roumanian Delegation took part in the work of the Commission in Paris. For certain practical reasons it now proposes a return to the system of enumeration. We took part in a Conference held for the purpose of preparing a Statute for the Danube. The system of definition gave rise to extremely lengthy discussions and to a large number of different interpretations. It was very suitable for rivers of general international concern, but not for those of limited concern, or for national rivers. The Conference compromised and included an enumeration in the actual text of the Danube Statute. It first of all gave a list of the rivers designated as international rivers in the Treaty of Peace,—the Danube, the Morava, and their tributaries and sub-tributaries,—the internationalisation of which it recommended.

Rivers possessing an international character may be classed in different categories. There are international rivers, the administration of which is entrusted to international commissions. This form of control, however, is not suited to rivers which separate two countries, that is to say, to rivers of limited concern. It is in no way suitable for rivers of purely national importance.

The Roumanian Delegation agrees with the French Delegation in considering that our Convention should in the first place deal with the internationalisation of rivers of general importance. As regards those which separate two countries or which are of joint importance to two countries, it should give expression to a *vœu* or recommendation in favour of the application of the same principles as in the case of international rivers, except in regard to administration by international commissions; the administration of these rivers should be entrusted to commissions composed only of riparians.

As regards national rivers, we consider that the Convention should not deal with them.

There are, therefore, three classes of navigable waterways to be considered,—rivers of international concern, for which the Convention will fix the regulations to be applied; rivers or waterways between two nations, in regard to which it will formulate a recommendation; and national rivers, in regard to which it will simply express a *vœu*. Should the Conference consider it unnecessary to make this distinction in the Preamble, the Roumanian Delegation would prefer the Preamble to be omitted. Our Delegation hopes that the Committee will see its way to adopt the system of enumeration, as it presents no difficulty. Most of the rivers of Europe are mentioned in the Treaty of Peace; as regards the others, the experts attached to the Conference will be able to indicate those possessing equal importance with the Danube or the Rhine. It will be easy to draw up a list of them. We consider that the system of enumeration would make the Convention clearer, and would prevent disputes or subsequent differences of interpretation. We propose, therefore, that Article 1 should be worded as follows :

In applying the present Convention the following are declared to be international waterways :

Rivers and river systems which are declared as such :

I. In the Treaties of Peace, *i.e.*,

(1) The Danube from Ulm;

(2) The Morava and the Thaya for that portion of their course which forms the frontier between Austria and Czecho-Slovakia, etc.

II...

.....
Other river systems which are not included in this list, but the navigable portion of which separates or crosses more than one State, shall come under the regime referred to in Articles 332 to 334 inclusive of the Treaty of Versailles.

The CHAIRMAN (speaking in French). — You refer to Articles 332 to 334 of the Treaty of Versailles. These articles deal with local transport traffic on waterways. Are we to understand that you approve the generous conceptions on which the Treaty of Versailles is based and the liberal principles which inspired it?

M. POPESCO (Roumania; speaking in French). — Certainly. Our intention in this amendment is to differentiate between freedom of navigation and administration, which we regard as an entirely different matter.

The CHAIRMAN (speaking in French). — You are not asking for the literal application of this regime?

M. POPESCO (Roumania; speaking in French). — No, we contemplate an altogether different regime.

The CHAIRMAN (speaking in French). — M. Alvarez, who is one of the principal scientific authorities of South America, has had occasion during his stay in Madrid to converse with a great number of his colleagues. He wishes to propose a system which he thinks will facilitate an agreement, and has asked me to allow him to lay it before you as soon as possible. He will now address you.

M. ALVAREZ (Chile; speaking in French). — In the first place I wish to thank the Chairman for his kind words in reference to my efforts towards the accomplishment of our task.

Navigable rivers are not all subject to the same conditions. Their geographical situation, their hydrographic regime and the nature of the country through which they pass, all combine to give them varying degrees of importance. It would therefore be quite useless to attempt to establish one single legal system applicable to all navigable rivers. Hitherto a distinction has been drawn between national rivers flowing through the territory of a single State, and international rivers separating or crossing the territories of two or more States. These international rivers alone have been placed under the regime of free navigation. But this distinction has now become quite inadequate. It has now become necessary to make other distinctions, more especially because they are rendered necessary by the very diversity of the conditions referred to. In particular with regard to this point differences between America and Europe exist which must be clearly brought out. In Europe most international rivers are easily navigable without interruption over the whole length of their course. The territories through which they pass are very densely populated; they are relatively short in length and are intersected by a network of means of communication; moreover, industry is in an advanced stage of development. In many cases, also, extensive works have been carried out for the purpose of overcoming natural obstacles to the navigability of the waterway. For all these reasons the international rivers of Europe are of supreme importance as means of communication and commercial arteries, because they concern non-riparian States quite as much as riparian States. It may be said that they possess a really world-wide degree of importance.

On the continent of America, on the other hand, the position is quite different. The majority of large rivers are not navigable uninterruptedly throughout their course; within the limits of one and the same State they pass through enormous tracts of territory possessing neither population, industry nor means of communication. The works necessary to improve the bed of the river are either non-existent or else extremely difficult, if not impossible, to carry out. Some rivers are as yet not even explored, or at any rate only partially so. In view of all these circumstances, the majority of the great rivers of Latin America possess characteristics entirely different from those of the great European rivers. They constitute neither easy means of communication nor commercial arteries of capital importance; in short, they only concern a limited number of States, the riparian States. We are therefore led by the preceding arguments to lay down the following tripartite division with regard to the regulation of navigation on international rivers :—

1. Some international rivers are of an essentially international character owing to the multiplicity of the interests which they involve. These rivers may be classified as of general concern. They formed the subject of general diplomatic agreements between European Powers at an early date in history. Free navigation on them has been affirmed as a principle of public European law. In some cases international commissions have been created in order to protect the general interests involved in this freedom of navigation.

2. There are international rivers which are not of general concern in the sense that, —as I have already stated,—navigation upon them is less easy and, from the point of view of commerce, serves a less useful purpose to States in general. As a matter of

fact they are of importance only to riparian States. On these rivers, as a general rule, free navigation has only been accorded to riparian States by conventions concluded between themselves.

3. Lastly, there are certain international rivers or international tributaries which only pass through the territory of two States and which are still to a large extent unexplored. As a general rule the riparian States have reserved the use of these rivers to themselves, sometimes by conventions, sometimes by means of a *modus vivendi* and sometimes by diplomatic negotiations which are still in progress.

From the foregoing we may draw the following conclusions : —In the first place free navigation upon international rivers may be recognised as a principle of general international law; in the second place, with regard to the regulation of navigation upon these rivers, the above-mentioned tripartite division is necessary.

1. In regard to the first class, that of international rivers of general concern, international commissions are as a rule already in existence and act as they think fit. These commissions will be maintained. Should it be recognised in special cases that similar commissions are required, they may be created.

2. With regard to the administration and regulation of navigation of rivers of the second class, these have usually formed the subject of agreements between riparian States. This system should as far as possible be maintained. Thus, side by side with the *general* regulations determined by the convention, there would be *special* regulations created by riparian States, which would not, however, conflict with the general regulations. Such a system would have the special advantage of enabling the riparian States of the rivers of Latin America to continue to apply the principles adopted in our continent, which may be called American public law.

3. With regard to rivers of the third class, which are to be actually named, they will be subject in every respect to such regulations as the riparian States may consider necessary, but these regulations shall not amount to an abolition of the principle of free navigation.

4. With regard to rivers which are *national* in virtue of traditional international law, these are not covered by the Convention which the Barcelona Conference is called upon to draw up. Nevertheless, it would be most desirable for the Conference to express an opinion with regard to them, in the form of a *vœu*, in order that States may as far as possible apply the general principle of free navigation to those of their national rivers which are of commercial importance.

For the application of the ideas which I have put before you, the Convention which the Conference is in course of discussing might be drawn up in the following form :

(a) The statement of the general principle of freedom of navigation should govern the entire Convention and should apply to all classes of international rivers. Under this principle, commercial navigation should be free for the flags of all nations on a footing of complete equality, but local transport traffic might be reserved.

(b) Special provisions relating to the international administration of rivers of the first class would then follow.

(c) With regard to rivers of the second class, it might be laid down, as was done at the Congress of Vienna in 1815, and in conformity with the practice of the Latin-American States, that riparian States of international rivers should settle between themselves all questions relating to the use of these rivers, in accordance with the general principle of freedom of navigation laid down in the first article, and for matters not provided for in the Convention. Such questions refer mainly to :

The fixing of the dues and taxes to be collected;

The co-operation of riparian States in measures of police and public health, and in works of upkeep and improvement;

The carrying out of the rules to be observed upon rivers in time of war;

The regulation of the use of the water for purposes of irrigation and industry under the conditions authorised by the Convention;

The settlement of disputes relating to navigation.

M. LELY (Netherlands; speaking in French). — As regards the proposed classification, I believe that it will be sufficient to draw a distinction between waterways upon which navigation is to be free and those which are to be internationalised. I

think that we ought to lay down the principle that a navigable waterway cannot be internationalised without the consent of the State in which it is situated. In my opinion we should make general distinctions only, and special circumstances should form the subject of special conventions.

M. ALVAREZ (Chile; speaking in French). — I did not intend that regulations for the three classes of waterways which I have suggested should be included in the Convention, but merely that the principle of this division should be borne in mind at the outset of the discussion.

M. POPESCO (Roumania; speaking in French). — I think we should adopt M. Alvarez' proposal, that is to say, to regulate this matter in the Convention, and not leave the internationalisation of rivers to private agreements; such agreements are very often imposed. The Barcelona Conference must therefore draw up the enumeration itself.

Mr. H. O. MANCE (Great Britain). — I think that before we start a detailed discussion, it would be as well, as was suggested by the Delegate from Chile, that we should define what we mean by an *international waterway*. Do we mean a waterway which serves more than one State, or a waterway which is submitted to some special form of administration? The two things are entirely different, and the one point that struck me in the general discussion as being the greatest obstacle to agreement was that the various speakers were inclined to confuse the question of administration with that of freedom of navigation,—that is to say, to confuse *réglementation* with *régime*. At Paris we always used the word *régime* to imply the regime of freedom, of equality and of continuity of navigation. We use *réglementation* for the other side of the question, but we prefer the word administration, which denotes how the waterway is administered. Regime and administration are entirely separate, and I think it will help our discussion here if the various speakers take special care to keep these two aspects of the question apart.

The meeting adjourned at 11 a.m.

Proposed amendments to the Preamble :

AUSTRIAN DELEGATION.

Paragraph 2, omit the words *as far as possible*. Insert after the words *no discrimination what ever* the words *with regard to navigation*. Between the words *account of* and *the flag* insert the words *the nationality of*. Between the words *flown* and *as* insert the words *or of goods either on account of their commercial origin or destination or the direction of the traffic*. Delete the words *through* and *without transhipment*.

BULGARIAN DELEGATION.

In paragraph 1, delete the words *concerning the regime of certain of these waterways defined below in Article 1 as being international*, and in paragraph 2 delete the words *from it being understood, on the one hand, that henceforth...* as far as the end of the paragraph.

CHINESE DELEGATION.

Whilst associating itself in the most formal manner with the principle of freedom of communications as laid down in the Preamble, and in conformity with Article 23(e) of the Covenant, the Chinese Government finds itself obliged, in view of the present situation of China, to request that the discussion on the second paragraph of this Preamble, beginning from the words *it being understood that* to the end, should be adjourned until such time as the Conference shall have defined the meaning of the international regime of navigable waterways.

If indeed the Conference decides that the Convention on the International Regime of Navigable Waterways applies not only to international rivers of general concern (the Rhine and the Danube) but also to *inter-riparian* rivers, the Chinese Government believes that it would be necessary to extend the principle to national rivers after careful consideration of each special case. In the contrary case, that is to say, if the international regime is not applied to *inter-riparian* rivers, the Chinese Government does not then see the necessity of extending the principle to national rivers, at least in the majority of cases. For this reason it requests that the discussion on the second paragraph of the Preamble should be adjourned until the end of the discussion on the Draft Convention. When the Conference has reached a decision on the definition of international waterways, the Chinese Government will reserve the right to make known its point of view on the application of the present Convention.

BRITISH DELEGATION.

Delete the second paragraph and insert it elsewhere in the Convention in the form of a separate article.

ITALIAN DELEGATION.

Add at the end of the Preamble the words *provided that the organisation of such services does not*

hamper the free transit of vessels, this being in conformity with what was decided in regard to towage in the Convention on Transit.

JAPANESE DELEGATION.

In paragraph 2 omit the words *and without prejudice to the provisions contained in the Convention on Freedom of Transit*, and add after the words *without transshipment* the words *on these waterways*.

NETHERLANDS DELEGATION.

In paragraph 1 for the words *do hereby enact* read *do hereby enact the following provisions*.

SERB-CROAT-SLOVENE DELEGATION.

In paragraph 2 omit from *it being understood to transshipment*.

SECOND MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Wednesday, March 30th, 1921, at 5 p.m.)

GENERAL DISCUSSION (CONTD.) — DISCUSSION OF ARTICLE 1

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

GENERAL DISCUSSION (Contd.)

M. SEELIGER (Germany; speaking in French). — I have listened with much interest to the explanation set forth this morning by the various speakers with regard to the procedure to be adopted in our Committee,—the first question which arose. The first two speakers expressed the opinion that in the first place the rivers to which the Convention is to apply should be clearly defined, that is to say, that the characteristics of such rivers should be definitely settled. The British Delegate pointed out the way when he stated that we must at the outset separate the questions clearly in our minds. By the word *internationalisation* may be understood the whole system, that is to say all the obligations which are to be imposed upon the various States and also the administration of the rivers. But these constitute two entirely different aspects of the question.

It appears to me difficult to begin with a definition, and then to try to fill up the framework provided in a preliminary article. Would it not be better to begin with a discussion of substantive law, that is to say the mutual obligations which the States forming the League of Nations are willing to undertake with regard to the treatment to be applied to rivers. In the Draft which we have before us (1) under the second heading the various questions at issue are stated,—freedom of navigation, equality of treatment, certain principles with regard to works, dues, etc. It is therefore substantive law which should mainly occupy the bulk of our attention.

The best method of procedure, then, would be to establish in the first place substantive law, and afterwards to decide to which class of rivers the principles of this substantive law should be applied. In this way we should avoid wasting time in a search for definitions, which is always difficult until the substantive law has been established.

M. MULLER (Czecho-Slovakia; speaking in French). — I am entirely of the German Delegate's opinion. I had intended to make the same suggestion, for hitherto the form of the question has been discussed without dealing with the substance. By discussing the real basis of the question, that is to say substantive law, we shall, as M. Seeliger has pointed out, more readily discover a criterion for internationalising rivers, and we shall then be able to establish a definition without difficulty.

M. WINIARSKI (Poland; speaking in French). — The procedure suggested by M. Seeliger was that which we adopted at the Commission of Enquiry. It may perhaps be well to remind you of the consequences arising out of it.

In speaking of the regime of navigation we do not mean an abstract idea, we are thinking of certain rivers. Some delegations understood this to mean international

(1) See p. 408.

rivers of general concern, but not common rivers. The delegations which were thinking of international rivers suggested for the regime of navigation regulations which were clearly inapplicable to common rivers; on the other hand delegations which had in mind common rivers were not prepared to accept certain regulations which could not be applied to common, but could perfectly well be applied to international rivers. The method proposed by M. Seeliger and supported by the Czecho-Slovak Delegate would be satisfactory if we had before us a *tabula rasa*. This, however, is not the case; a certain number of rivers are already recognised by public international law. We are not building on a void; we have historical bases upon which to build. Allow me to suggest a formula which may serve as a starting-point for our subsequent discussions. It is as follows :

In applying the present Convention, the waterways enumerated in the Annex to this Convention shall be considered as international waterways.

We should then proceed to consider the regime applicable to common rivers. Our task would be to establish the regime to be applied to rivers of general international concern, and subsequently to draft certain rules with regard to freedom of navigation capable of application to common rivers also.

I would add that the distinction between the regime of navigation and the administrative system is not sufficient, because there are variations even in the regime of navigation itself. For example, it will be advisable for us to envisage the application of the different regimes of navigation, according to whether the river in question is international or what is called of common concern.

M. BIGNAMI (Italy; speaking in French). — I wish to make what I think is a practical proposal. Let us begin our discussion of the Draft Convention now before us article by article. If we proceed otherwise I think we shall waste time. To my mind it would be better to postpone any discussion of the Preamble until the end; it involves a difficult question relating to national and international waterways. If we do not reach a decision with regard to the first article, we can then choose some other method.

M. REINHARDT (Austria; speaking in French). — The Italian Delegate's proposal seems to me a most practical one. I would simply ask that if, during the discussion of any article, it should be found desirable to return to the Preamble or to Article 1, which deals with the alternative systems of definition and enumeration, this should be done at once.

The CHAIRMAN (speaking in French). — If all the delegations have thoroughly considered this question of procedure, I propose to take the opinion of the meeting upon the system to be adopted. Two systems have been put forward. The first is that of M. Seeliger, who advocates the consideration of substantive law, in other words, the settlement in detail of the provisions contained in each article, and a return to the Preamble later on. This proposal is supported by the Czecho-Slovak Delegate. The second system proposed is to begin by examining the principle contained in the Preamble and Article 1.

M. LOISEAU (France; speaking in French). — As I pointed out this morning to our distinguished Chairman, my position here is, for two reasons, purely temporary. In the first place I replaced M. Charguéraud, whose health has prevented him from returning to Barcelona, and, secondly, I also replaced the substitute who was appointed to take his place, and who, I hope, will arrive to-morrow morning.

In these circumstances you will all understand that I have no wish either to commit or forestall the attitude of my colleagues. All that I am in a position to say is that in principle the French Delegation remains faithful to the distinction, which M. Charguéraud put forward and argued with such force, between international rivers of general concern and rivers of common concern and also to the principle of enumeration.

With regard to the method to be employed, it seems to me that since we have a text actually before us and that if we employ some other system we shall be forced to grope our way, the Italian Delegate's proposal appears to be the most practical.

M. MONTARROYOS (Brazil; speaking in French). — I think that a certain amount of confusion has arisen in the Committee with regard to the principle which we are seeking to apply, and the method by which it is to be applied. What is our object under the terms of Article 23 ? It is to establish freedom of communications upon navigable waterways. Are we all agreed upon this point ? I think so. What are these navigable waterways ? That is where the confusion has its origin. We are not agreed as to the definition of international rivers. Even in regard to the definition contained in the Draft, when it becomes a question of applying this definition, we must bear in mind a certain distinction relating to so-called international rivers. For instance, as I have pointed out (1), there are common rivers and successive rivers. The Amazon, which is a successive river, is regarded as international; we have always regarded it as a national river. This does not imply in the least that we refuse to grant freedom of navigation on the Amazon; it is simply to show you the extreme difficulty of achieving a complete definition. Since we wish to apply the principle of freedom of navigation, I fail to see why we do not state the question fully; in other words, the question is to accord freedom of navigation upon all navigable rivers giving a State access to the sea. I do not know whether this principle is acceptable, but we for our part accept it. Having reached this stage, let us try to come to an understanding as to what an international river is. It will be seen at once that there are various classes of rivers,—those, amongst others, for which treaties are in force, and the existing regime of which we cannot alter to too great an extent. For instance, the question will arise of internationalising the administration of these rivers, and in this connection we shall encounter principles which cannot be applied to all rivers. We may consequently accept the principle of freedom of navigation, either with or without internationalising the river administration.

In these circumstances it may perhaps be better to begin the discussion, as proposed by the Italian Delegation, bearing in mind, however, the ideas put forward by the Chilean Delegation, but without binding ourselves for the moment to distinctions and classifications of too hard-and-fast a nature.

M. TSANG-OU (China; speaking in French). — I entirely support the proposal of the Italian Delegation, but I am afraid that we should be, as it were, working in the dark, because some delegations wish the Convention to apply only to waterways of general international concern, and others wish it to apply to waterways both of general and of limited concern. Would it not be well to come to an agreement at the outset on the question whether the Convention is or is not to apply to waterways both of general and limited concern ? Otherwise in course of discussion some delegations will take a very wide view, under the impression that the Convention is not to apply to waterways of limited concern, whilst others will take a very restricted view, because they are under the impression that the Convention is to apply to all navigable waterways. I am therefore of the opinion that the Italian proposal should be adopted, but only after agreement has been reached upon the question of principle.

M. VALLOTTON (Switzerland; speaking in French). — The time has now come when, as in all preliminary discussions of this kind, it may be said that everyone is in agreement, subject to certain reservations on questions of form. The German Delegation agrees with the Italian Delegation and others that the first question to be settled is the nature of the basis of discussion. The experience gained at Paris and upon other similar commissions has shown that, as M. Bignami has said, in order to produce satisfactory results, there is nothing to equal the discussion of text. I propose therefore that we should agree to take the scheme contained in the *Green Book* as the basis of our discussions, it being of course clearly understood that general discussions will take place in connection with the articles of the *Green Book*. By this method we shall be compelled by force of circumstances to postpone until a later date the consideration of points with regard to which we cannot come to an agreement now. I therefore entirely concur in the proposal which I venture to call the Germano-Italian

(1) See p. 27.

proposal. We will consider substantive law together with the general principles, and will take the scheme submitted to us as basis for this discussion. This is my proposal.

The CHAIRMAN (speaking in French). — I think everyone is agreed that we should at once proceed to consider Article 1 of the *Green Book* Draft. I note that the Italian proposal has already obtained the support of a large number of delegations. In these circumstances I propose that the Committee should attack Article 1, which is the most indigestible morsel of our meal.

M. TSANG-OU (China; speaking in French). — ...adopting the principle that this Convention applies to international waterways of general concern as suggested by M. Vallotton.

M. MULLER (Czecho-Slovakia; speaking in French). — When a draft convention has to be submitted to a conference for its approval, it is customary for a rapporteur to be appointed, in order to give necessary explanations and to defend the scheme in question. I therefore request that a rapporteur be appointed.

The CHAIRMAN (speaking in French). — The Officers of the Conference have had this important question under consideration from the outset, but they wished in the first place to consider the situation. I think that we can now proceed to make this appointment.

Mr. H. O. MANCE (Great Britain). — I think, if I understood the Delegate from Czecho-Slovakia aright, he did not propose to select a rapporteur to report to the plenary session of our Conference, but suggested that someone should be appointed to defend the *Green Book*. In the absence of so doughty a champion as M. Lankas...

The CHAIRMAN (speaking in French). — That is a practical idea, and on behalf of the Officers of the Conference I wish to thank the author of this very sound suggestion.

You will all remember that M. Hostie, who is present here as a member of the Organising Committee of the Barcelona Conference, took an active part in the preparation of the Draft Convention. He has been invited by the League of Nations to take part in our work in an advisory capacity and as member of the Organising Committee, in view of his experience and the fact that he does not belong to any delegation. I think that he would be the person most naturally indicated to interpret the spirit of the Draft. I therefore propose to the Committee that M. Hostie be asked to act as commentator of the Draft Convention. I hope that in making this suggestion I am voicing the general feeling. In view of your applause, there is no need to take a vote on the question.

On behalf of the Committee, I ask M. Hostie to act as commentator of the Draft Convention, and to undertake to expound it.

M. HOSTIE (speaking in French). — I am deeply honoured by the difficult task which you have entrusted to me, and I thank you very cordially. I will do my best in all modesty to supply you from time to time with explanations of what I believe to have been the intention of the authors of the Draft, without, however, incurring reproach as the champion of a gospel. At Paris we made no pretention that our work was infallible, but the questions which are to be dealt with here were certainly debated there exhaustively. I shall therefore try from time to time to show you the reasons which led us to lay before you the solutions contained in the *Green Book* and to explain to you what we considered to be their essence.

DISCUSSION OF ARTICLE 1

The CHAIRMAN (speaking in French). — Since the Committee is unanimously in favour of proceeding to the discussion of Article 1, I will now read it :

Definition.

In applying the present Convention, the following are declared to be “international waterways” :

1. All parts which are naturally accessible from the sea of a waterway which, in its course, naturally accessible from the sea, divides or crosses different States; and also all parts of any waterway naturally accessible from the sea, which connect with the sea a waterway included in the above definition.

For the purposes of the above definition it is understood :

a) That the possibility of transhipment from one vessel to another is not excluded by the words “accessible from the sea”;

b) That tributaries are to be considered as separate waterways;

c) That lateral canals constructed in order to remedy the defects of such a waterway are assimilated thereto.

2. Waterways or parts of waterways, whether natural or artificial, expressly declared as being placed under the regime of this Convention in unilateral Acts or agreements with the consent, in particular, of the State or States under whose sovereignty or authority the waterways or parts of waterways in question are situated.

I should inform you that various amendments have been submitted,—in particular by the Netherlands, Japan, Great Britain, Portugal, Italy, India and China.

M. LELY (1) (Netherlands; speaking in French). — In Article 108 of the Treaty of Vienna it is laid down that the Powers whose territories are separated or traversed by a navigable river undertake to settle by mutual agreement all points connected with navigation upon these rivers; that they will appoint for this purpose commissioners who will meet at latest six months after the termination of the Congress, and will adopt as a basis for their work the principles laid down in the following articles. In Article 116 of the same Treaty it is stated that all questions referred to in the preceding articles will be settled by a series of regulations which will also include all points which may require subsequent decision. In my opinion the Treaty of Vienna did not declare any rivers to be directly international, because for this purpose a system of regulations was necessary, but according to the proposal now before us, any river coming within the terms of the definition contained in Article 1 automatically becomes international. I am somewhat doubtful as to whether it is desirable to internationalise such a large number of small rivers of very slight importance for navigation. Indeed, I am of opinion that only those of real importance should be declared international. This is my first criticism.

My second is as follows :—Why use the expression *naturally accessible*? Of what interest to us is the natural condition of a river? Moreover, only watercourses, and not canals are referred to. Why should the latter not be mentioned? If expenditure were involved only for canals, I could understand it, but this is not so. For instance, the canal from Amsterdam to the Rhine cost several tens of millions, but the improvement of the Rhine also cost tens of millions. Why say that one shall be international and not the other? I fail to see the reason. This is not in conformity with Article 23 of the Covenant, which makes no distinction between canals and rivers. These are the principal criticisms which I wished to make in reference to Article 1.

M. POPESCO (2) (Roumania; speaking in French). — This morning I explained why we regard it as almost impossible to find a definition which will cover all classes of rivers. For this reason I advocated the method of enumeration.

In Roumania we have three classes of rivers. In the first place there is the Danube

(1) See text of Netherlands amendment, p. 44.

(2) See text of Roumanian amendment, p. 45.

with its mouths. The Danube is an international river of general concern. In respect to this river we are prepared to affirm the principle of absolute freedom of navigation and equality of treatment. Of course certain restrictions will have to be made with regard to local traffic between ports of the same country.

Rivers separating two countries constitute the second class. The Dniester lies between Roumania and Russia. The Dniester is a large river, but does not concern the general interests of non-riparian States to the same extent. We fully understand that the principle of internationalisation as applied to the Danube would not be entirely the same as for the Dniester, though of course the principle of freedom will be admitted with reference to navigation upon these rivers.

In the third class are purely national rivers, that is to say those which flow through the territory of our country only. On these rivers also we are prepared to allow freedom of navigation, provided that this navigation is regulated according to Roumanian law. Here, then, are three classes of rivers, all quite different in regard to the application of the principle of internationalisation. We do not have to make distinctions between them. I proposed that for the moment our Convention should merely deal with navigation upon rivers of general international concern and should contain a stipulation with regard to rivers involving common concern only. Further, my proposal was to leave aside for the moment rivers of purely national concern, and to make a recommendation to the effect that the great principle of freedom of navigation should also be applied to them.

I therefore advocate the system of enumeration. A list of certain rivers would be drawn up. This would obviously not present any difficulty, since the rivers which are to be declared of general international concern have already been indicated in the Treaty of Peace. Another list could then be drawn up for the second class of rivers, involving limited interests only. For this second class also the principle of freedom would be proclaimed. Their administration would be quite different. The task of establishing this system would be left to the riparian States. Finally, for national rivers a recommendation would be made; the principle of freedom of navigation would be adopted, but would be administered in accordance with the legislation of the country concerned. These are the general lines of our proposal.

The CHAIRMAN (speaking in French). — That is a very clear statement. It has been most interesting to hear the views of the Netherlands and Roumanian Delegations. Though they stated very different principles they have agreed to adopt the system of enumeration; I think, however, that if our discussions are to proceed satisfactorily the system of enumeration should be explained. You are aware that this is not the system adopted in the *Green Book*. When this explanation has been given the position will become clear. The Netherlands and Roumanian Delegations have stated their views, but I do not know the views of the other delegations on this point. What is the opinion of the French Delegation?

M. LOISEAU (France; speaking in French). — You may count the French Delegation among the supporters of the system of enumeration.

M. LELY (Netherlands; speaking in French). — All waterways which are already internationalised may be enumerated, so to speak, *en bloc*. The principle of enumeration would be retained, even though all these rivers were not enumerated one after the other. This is my proposal.

M. TSANG-OU (China; speaking in French). — The Chinese proposal is as follows :

The Chinese Delegation sees no objection to accepting the definition as laid down in Article 1, paragraph 1, should the Conference decide that internationalisation has been granted in order to afford access to the sea to a landlocked State. In this case, it proposes that the words *accessible to the sea* be substituted for the words *accessible from the sea*, and that the High Contracting Parties shall consist only of the riparian States without the possibility of assimilating the non-riparian States with the riparian.

If, on the other hand, the Conference were to decide that the system of internationalisation should give freedom of navigation to non-riparian States, the Chinese Dele-

gation is of opinion that it would be necessary to fix a certain limit to the tonnage transported, in order that the navigation of non-riparian States should not injure local navigation, or else that a decision should be arrived at that the transport of imports and exports shall be direct without transshipment and without obstructing the establishment of public towage services and other forms of monopolised haulage. Both these cases apply to international rivers of limited concern, that is to say to those of which the High Contracting Parties are riparian States, who will frame their agreements in accordance with the principles of the present Convention (particularly Articles 5, 6, 7, 8, 19, 20, etc.).

With regard to international rivers of general concern, the Chinese Delegation proposes to indicate them in a table attached to the present Convention, the provisions of which apply wholly to them. I think that, in order to facilitate the discussion, we should know to which rivers these Conventions apply.

The CHAIRMAN (speaking in French). — Do you support the system of enumeration?

M. TSANG-OU (China; speaking in French). — Yes, for rivers of general concern.

The CHAIRMAN (speaking in French). — That is the view of the French Delegation; for other rivers, a definition would be given.

M. TSANG-OU (China; speaking in French). — Very well.

M. SEELIGER (Germany; speaking in French). — I wish to ask for an explanation. Frequent reference has been made to rivers of general concern. Are we to take the map of the world and point to those which are of general concern? And if we discuss this subject, what elements constitute this general concern? I can well imagine that one such element would be, for instance, the amount of tonnage conveyed upon a river. Another point might be the length of the river. There are many other elements which might constitute a river of general concern. We might also take as a basis all rivers which have already been internationalised by treaty. The Rhine, the Danube, the Elbe and the Oder were internationalised by the Treaty of Peace. The German Delegation wishes to know whether rivers of general concern are to possess the characteristics of these rivers. I would ask the various delegations to define the elements constituting the general concern which is to form the basis of internationalisation.

The CHAIRMAN (speaking in French). — The question has been very clearly put. I imagine that those who advocate the system of enumeration will wish to answer it.

M. POPESCO (Roumania; speaking in French). — In the answer to M. Seeliger I would state that in our view we regard as rivers of general international concern those which have been indicated as such by the Treaty of Peace, and which are to be administered by international commissions, including representatives not only of riparian but also of non-riparian States.

M. LELY (Netherlands; speaking in French). — I fully understand the objection raised by the German Delegate. It is quite impossible to consider size only when estimating the importance of a river. A very small river may be much more important than a large waterway. Some very shallow rivers carry much more tonnage than deep rivers. A whole collection of circumstances must be taken into account in deciding whether rivers possess an international or a national character. After all, it is a question of fact, and in all questions of fact it is impossible to find a formula which will include all special circumstances. The only way, therefore, is to enumerate them *en bloc* as we have proposed.

It is obvious that rivers upon which navigation has been declared free are also of considerable importance. It seems to me that the only method calculated to settle whether they are international rivers—the only simple method—is the method of enumeration. I think it would be difficult to find any other. Once the principle has

been accepted that a waterway cannot be declared international without the consent of the State or States through which it passes, it becomes difficult to adopt a general definition declaring all other rivers international without the consent of the State or States through which they pass.

M. SEELIGER (Germany; speaking in French). — At the risk of seeming tiresome I am compelled to state that all these explanations do not entirely satisfy me. I agree with the Delegate of the Netherlands that the question is extremely difficult. But the explanations given by the Roumanian Delegate cannot be regarded as sufficient. It is begging the question to say that we are trying to classify rivers of general concern in order to internationalise them. In answer to my question which rivers are of general concern, I received the answer : Rivers which have been internationalised ; once they are provided with an international commission they become of general international concern. I think we must be quite clear with regard to the elements which cause a river to become of international concern, otherwise we shall remain in a vicious circle. The world changes very rapidly. Rivers which today seem small will in five years time be important rivers, displaying considerable shipping activity. There is therefore a risk that, in a few years time, you will be obliged to change the international law which you are establishing now.

Even if we adopt the method of enumeration, it would be well to settle the definition of a river of general concern. I have ventured to make certain suggestions in this connection. I have for instance proposed that the volume of shipping should be taken into account, taking as types rivers which have already been internationalised, such as the Oder, the Rhine, and others. It is not logical to take as our starting-point the assumption that rivers possessing an international administration are of international concern. We must make our deductions from the other end, and ascertain the characteristics of these rivers, and the reasons for which they have been provided with an international commission. This is the only way in which we can arrive at a lasting definition.

M. Walter ROSENTHAL (Esthonia). — This is a very complex and difficult question. Even if we were able to fix a hard-and-fast line, we could not expect it to answer the purpose. We have to consider that every river is a living organism. Even a strict system of enumeration is not so satisfactory as a definition. Take a river like the Amazon, which is perhaps the largest in the world ; whatever its size, its source is as small as that of any little unimportant stream.

M. MONTARROYOS (Brazil; speaking in French). — When I suggested to the Committee that the question under consideration should be clearly stated, I was under the impression that I had also called your attention to the principles alluded to by the German Delegate, in regard to which he has called for explanations.

In order to ascertain whether a river is of importance to all countries from the point of view of freedom of navigation, we must surely be guided by the following characteristics. The mere fact that a river is a prolongation of the free high seas route, that is to say, that it flows into the sea, does not make it international. In spite of this fact, the river may remain a national one. In this connection I remember having cited a typical example. The river São Francisco, which has been thrown open to shipping by Brazil, is from the international standpoint, for various commercial and political reasons, of more importance than certain small rivers which form the boundary between two States, even though they may be navigable. We must not, therefore, regard international rivers as those which pass through or separate several countries. We must regard the question from the point of view of shipping, and ascertain whether from this point of view the river possesses a greater degree of importance. My proposal therefore was to apply the principle of freedom of navigation to all rivers. The problem consists in finding means of opening to all flags all navigable waterways which have access to the sea.

Certain navigable waterways are less important than others. That they are less accessible to shipping is not solely due to certain geographical conditions, but also to political and commercial conditions which must be borne in mind. Some rivers may

offer great facilities for navigation and yet not offer such great commercial advantages as others.

This is not all. In a few years time the situation may change. A river which we regard as a river of general international concern may become less important than another which we have refused to class among those of general concern. Our task, however, is to create a permanent system.

How is the question to be solved? Neither definition nor enumeration is adequate. A definition, however, will enable us to make a preliminary classification, and indicate a certain number of rivers of general concern to which the principle of freedom of navigation can be applied. A definition is less exposed to changes which I fear would affect an enumeration. At all events an enumeration cannot satisfy everybody, and it involves certain dangers. I propose that the Committee should adopt as a general principle that all navigable waterways should be open to shipping; this is the principle of freedom of navigation for all flags. We might then adopt the definition contained in the *Green Book* with regard to rivers of general concern. This, I repeat, would enable us to make a preliminary enumeration. Lastly, the Committee might adopt the recommendation contained in the Preamble.

Assuming that a river is not international simply because the principle of freedom of navigation has been applied to it, it would be better to substitute the expression *rivers of international concern for international rivers* (1).

The conditions of navigation upon the Amazon are as free as upon any other river whatsoever, yet this great waterway will never be an international river as viewed from the standpoint usually adopted. It will always remain a national river.

M. WINIARSKI (Poland; speaking in French). — In order to estimate at its proper value the scheme submitted to us, we must clearly understand the object at which we are aiming. I would venture to remind the Committee of the undertaking entered into by the Powers in signing the Covenant of the League of Nations. The following are the terms of Article 23 relating to the question under consideration :

... the Members of the League : ...

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind.

If we compare the proposal contained in the Covenant with the scheme submitted to us, I contend that the means employed go far beyond the object aimed at. If we were content to abide by obligations we might limit ourselves to the Convention on Transit by rail and water; but we wish to go further. The Polish Delegation has already called the Conference's attention to the fact that provisions which appear to deal only with questions of navigation, also involve the settlement—a matter of some importance—of purely economic and commercial questions.

By adopting this scheme we shall not merely revolutionise international law, but also international economic legislation. It is impossible to foresee the results of this Convention. As I have said, to fulfil the obligations undertaken in signing the Covenant, a convention upon transit will be quite sufficient. We desire, however, to do more,—to draw up a standard statute for international rivers.

I agree with the Delegates of the Netherlands and of Roumania, that there is no question of estimating the economic or political importance of any particular river for the whole world, or for any particular country. Political importance varies from day to day; economic importance may also vary. The one thing permanent is the legal fact. There are a certain number of legal facts to act upon. There are a number of rivers which have been declared international by international treaty; the result of this internationalisation has been that non-riparian States have been permitted to take part in the administration of these rivers. I therefore differ from the Brazilian Delegate, who wishes us to use the phrase *rivers of international concern* instead of

(1) The Brazilian Delegation presented the following amendment :—Substitute the term *waterway of international concern for international waterway* wherever it occurs.

international rivers. Our object is the same, but the means which I propose are different. I admit that to proclaim freedom of navigation upon a river is not the same thing as to internationalise it, but I think it better to use the phrase *international rivers*, because the statute of certain rivers constitutes an undeniable legal fact which we are powerless to alter. Our Convention cannot classify these rivers, which have been internationalised as rivers not of international concern.

M. VALLOTTON (Switzerland; speaking in French). — I should like to state that among those delegates who have declared themselves in favour of the system of enumeration, only two are really in favour of this system. I have listened with great pleasure to M. Lely's remarks. The disagreement between us is only a question of words, and that which he calls the system of enumeration I call by the opposite name.

I think we are all agreed that it would be sufficient to add the amendment proposed by the Netherlands Delegation to the definition as drawn up at Paris; in other words, to include rivers of common concern as a second category. The intention of the authors of the Paris scheme was to institute two classes; firstly, waterways which are international by definition, by their natural conditions, and, secondly, waterways which are international with the consent of the parties concerned.

M. Lely may with justice criticise the second portion of our article, which will not entirely meet his wishes. It will, however, be very easy to satisfy him by subdividing paragraph 2 of Article 1. There is, however, one point upon which we continue to disagree with him. He is not prepared to admit the existence of waterways which are international by definition. At this point I venture to ask the supporters of the system of enumeration a question. Are they prepared—we asked our colleague M. Charguéraud a similar question at Paris—to provide us with free board and lodging in this delightful town of Barcelona while we draw up this enumeration? We shall be compelled to send for our families and arrange for permanent quarters for ourselves and our successors. What will happen? As M. Seeliger has remarked, we might call upon candidates for internationalisation to come forward as volunteers. I rather doubt whether the list of those who would voluntarily offer their watercourses for internationalisation under this system of enumeration would be very large. We shall have to exert ourselves much more than in the case of Article 10 of the Covenant upon transit, in order to persuade States to submit the names of watercourses suitable for internationalisation.

Joking apart, however, I should like to level a much more serious objection against the system of enumeration. In my opinion, enumeration is a political measure which is bound to have unfortunate results for a Conference of this kind. How are we to agree? Will the taking of a vote suffice to compel a State to allow itself to be included in this enumeration, or are we to use persuasive means? Persuasion is the method contemplated under the system of definition in the form proposed by us. This definition is not perhaps a good one, but it possesses the advantage that it does not forcibly impose upon any State the internationalisation of its waterways. Each is asked, after duly considering the natural characteristics of its waterways, which it is in a position to know better than anyone else, to sign and adhere to this convention of its own free-will. Moreover, this enumeration appears to me to be contrary to the spirit of the Covenant. The Covenant was mentioned just now; I venture to quote it for the purpose of drawing from it conclusions contrary to those of my esteemed neighbour the Polish Delegate.

One of the governing principles of the Covenant is to establish between the Powers not *de facto* but *de jure* equality; to pay due consideration to the interests of the small as well as those of the powerful. It has been quite rightly said that a little watercourse which, compared with the great rivers of Brazil, is a mere streamlet, may be of very great importance. Our European rivers are mere rivulets compared with the extraordinary waterways described to us by the Brazilian and Colombian Delegates.

In my opinion, for the various practical reasons which I have pointed out, we should not waste our time in a discussion on the subject of enumeration which will

be both fruitless and unpleasant. I therefore beg my colleagues not to insist upon this proposal to adopt the system of enumeration.

M. SEELIGER (Germany; speaking in French). — If I have understood the Polish Delegate aright, he said that the Convention which we are now discussing is based upon the Covenant of the League of Nations, and he is afraid that the Committee would be going beyond its terms of reference in drawing up rules for navigable waterways, since the Covenant refers only to freedom of communications. I would like to draw his attention to the fact that a clearer and more definite basis for the Convention is to be found in Article 338 of the Treaty of Versailles. You are aware that the Treaty of Versailles internationalised certain rivers. It also laid down general rules in Articles 332 to 337 which were to govern this internationalisation. In paragraph 1 of Article 338 the Treaty of Peace continues as follows :—*the regime set out in Articles 332 to 337 shall be superseded by one to be laid down in a General Convention drawn up by the Allied and Associated Powers and approved by the League of Nations, relating to the waterways recognised in such Convention as having an international character.*

It is on this paragraph that I base the right to ask you what elements go to make up the international character of navigable waterways, for this article expressly states that it is for you to affirm the international character of certain navigable waterways which have not as yet been internationalised, and because the Treaty states that we are to apply new principles which are to be enunciated by us in this Convention upon international rivers. I was under the impression that in Article 1 we were discussing an enumeration and not a general definition. In order to prepare a list, it seems to me that we must indicate the characteristics which constitute an international river. This is the point I wish to raise in connection with the Article which I have read.

M. POPESCO (Roumania; speaking in French). — I think that we shall be able to find a large number of the desired characteristics by considering certain rivers of the international type. Take for instance the Danube as an example; we shall at once find certain characteristics which will assist us in the enumeration. It is a river which separates several countries throughout its length of 2,000 kilometres. It is accessible from the sea for large vessels, and also possesses navigable tributaries separating many countries. Here are a number of characteristics which we may take as a guide in our enumeration.

M. MONTARROYOS (Brazil; speaking in French). — I am afraid that I do not agree with the Polish Delegate, but I think that our disagreement is more apparent than real. In the first place we must apply Article 23 to navigable waterways. We are not merely trying to facilitate transit conditions. In accordance with the Covenant, we must make conditions of freedom of navigation and of transit applicable to waterways, railways, and so on. Our task is therefore to apply freedom of navigation to navigable waterways. In these circumstances, and with reference to the question of defining the waterways to which we are to apply this principle, it appears to me that the Polish Delegate, when he says that we must recognise a legal fact, namely, the existence of rivers which are regarded as international in virtue of certain treaties, is narrowing down the question too much. We are not here to legislate for rivers which are given an international status by existing treaties; we are here to do something more, otherwise it would not have been worth while our meeting together. Of course, in endeavouring to apply freedom of navigation to the greatest possible number of rivers, we shall recognise existing treaties; and rivers designated in them as international—perhaps wrongly so—will also be included. But the main point is to ascertain to what other rivers freedom of navigation is to be extended. In my own view they are already indicated, namely, rivers on which navigation to and from the sea is possible. We shall then establish the administration; but at this point I would express my regret that the Swiss Delegate should say that the internationalisation of rivers involves an element of unpleasantness, since persuasion or compulsion must be used. We desire to establish a regime of freedom, and for this reason the

word *internationalise* is bad. We have no wish to internationalise rivers—on this point we are in agreement with the Polish Delegates—in the sense apparently meant by the Swiss Delegate. We wish to open rivers for free navigation and to provide all possible facilities for commerce, but we do not wish to internationalise the administration of these rivers. Let us make this point clear. We wish to open rivers, when this is desired, but our work is to be a work of freedom.

We are now coming to the question of enumeration or definition. The German Delegate has quoted an article from the Treaty of Versailles. This article is not very easy to understand, but the gist of it is as follows,—a general definition is presumed : and to this is added :—

...and such other parts of these river systems as may be covered by a general definition.

If we intend to abide by the Treaty of Versailles we must accept the idea of a general definition. In short, if the meaning to be given to the word *internationalise* is that stated by the Swiss Delegate, we must not attempt to internationalise rivers; if, on the other hand, you regard it as meaning the opening of rivers for free navigation, the accomplishment of a work of freedom and finally the classification of these rivers in accordance with the general definition, we must internationalise them. That is the idea.

Mr. H. O. MANCE (Great Britain). — I should like to refer to my remarks this morning, as to the meaning we attach to the word *internationalisation*. I think this discussion has amply shown that there is some need to adopt a proposal such as that suggested by the Delegate of Brazil, that when we refer to a river to which a certain regime of freedom is to apply, we should speak of a river of *international concern*, and we can leave it to the exponents of purely international administration to use the word *international* by itself. I hope therefore that that distinction will be adopted, because I notice that this afternoon several different meanings have been attached to the expression *international waterway*. There has been the legal meaning mentioned by the Polish Delegate; the Brazilian Delegate interpreted it in one speech as meaning *a waterway giving access to the sea*, and any river mentioned in treaties in another. The Netherlands Delegate adopted the definition which we propose to use for rivers of international concern, and the Roumanian Delegate used sometimes one and sometimes the other. The only other point I think it is necessary to make to-night is that the discussion seems to have shown unmistakably that if we are to enumerate we must have a definition to define the principles of such an enumeration, and, in that case, if we have a definition, there is no need for an enumeration.

The CHAIRMAN (speaking in French). — I would ask General Mance to explain a little farther.

Mr. H. O. MANCE (Great Britain). — The first point was simply that in order to make the discussion clear, we must use the word *international* to mean one and the same thing. That was one point. The second point was with reference to the general question which we have been discussing this evening, namely, whether we should adopt a general definition for international rivers, or have a list of international rivers. In this connection I stated that, in order to draw up the list of international rivers, there must be a definition of the principles on which that list should be founded, and if there is a definition of such principles the list is unnecessary.

M. HAAS (Secretary-General of the Conference; speaking in French). — General Mance considers that, in order to avoid any confusion with regard to the meaning of the word *international*, which has been used in the various statements made with entirely different meanings—sometimes with a legal meaning, sometimes in an economic sense, and so forth—and in order to make it quite clear that there is no question of international administration, but merely a question of rivers which are recognised as possessing characteristics admitting of the institution of freedom of navigation—General Mance, I repeat, is fully in agreement with the Brazilian

suggestion that the term *rivers of international concern* should be used, as proposed in the preliminary texts which serve as a basis for the *Green Book*.

The second point put forward by General Mance is an entirely different one. It is that, if we intend to proceed by the method of enumeration, we must begin by arriving at an agreement with regard to the principles on which this enumeration is to be based. General Mance added that if we are obliged to define these principles we must have a definition; and, if we have a definition, it is not worth while making an enumeration.

The meeting adjourned at 7.30 p.m

THIRD MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Thursday, March 31st, 1921, at 10.30 a.m.)

DISCUSSION OF ARTICLE 1 (CONTD.)

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 1 (Contd.)

The CHAIRMAN (speaking in French). — In the course of our meeting yesterday evening, after the contribution made to the discussion by our colleague M. Seeliger, the German Delegate, who gave us such a clear statement regarding the essence of the problem before us, the situation suddenly became clearer and we were able to proceed with the discussion with a clear grasp of the points at issue.

I myself was extremely grateful to everyone for the candour and high tone of the arguments put forward on all sides,—arguments, which were imbued with a thoroughly conciliatory spirit. My only regret is the absence of our colleague and friend, M. Charguéraud, whom I still regard as the father of the system of enumeration. His absence is a great loss in our Committee. I noted last night that the majority of the meeting inclined in favour of the system of definition. I feel that if M. Charguéraud had been with us, he would have been able to bring to bear the whole force of his arguments and his convictions, and would thereby have enabled us to go more deeply into this fundamental question.

M. REINHARDT (Austria; speaking in French). — In the course of our discussion yesterday we heard spoken what we have already read in the *Green Book Report*. Though we have not yet found a formula, we nevertheless, as our distinguished Chairman has said, have made considerable progress. We have found our bearings, and in such matters this is the main point. Two systems have been proposed,—the system of definition and the system of enumeration. Naturally each of these two systems claims a number of supporters, but as General Mance said yesterday, in order to be able to prepare a list we must in the first place know what this list is to contain, and for this purpose some sort of definition is necessary; therefore definition is, in fact, the first step, and enumeration the second. We cannot eliminate definition by substituting for it the system of enumeration. In my opinion, therefore, we cannot dispense with definition. However we proceed, we shall eventually come to the point when a definition is necessary. Definition involves difficulties; this became apparent during the meetings of the preparatory committee. We, however, are in a much better position, because we have a definite scheme to discuss. It seems to me that the only way of bringing our work to a successful conclusion is to proceed to consider this scheme and to adopt it as the basis of discussion.

It is extremely difficult to formulate the criteria proposed, especially that relating to the amount of shipping. This phrase resembles, if I may use the simile, a piece of elastic which may be stretched or contracted at will. It is a very fortunate, therefore, that this expression does not appear in the scheme under discussion. It will be readily understood from what I have said how difficult it would be to adopt it as a criterion.

Two considerations contribute to form the international character of a river,—natural access from the sea and the fact that the navigable waterway separates or crosses different States. Taking these two factors as a basis for our definition, surely it would be logical to say that all waterways fulfilling these conditions are international waterways. Moreover, I see no reason why this interpretation of paragraph 1 should not also be applied to tributaries.

The CHAIRMAN (speaking in French). — Is it your view that we should proceed to consider Article 1 forthwith, and, for the time being, put on one side the system of enumeration?

M. REINHARDT (Austria; speaking in French). — In conclusion I will propose that the Committee take this definition as the basis of discussion for Article 1.

M. ALVAREZ (Chile; speaking in French). — During this discussion of Article 1 an attempt has been made, if not to show incompatibility, at any rate to draw a distinction, which does not in reality exist, between enumeration and definition.

In the first place, undoubtedly, we must define what we mean by an international river; otherwise it will be impossible to come to an agreement. But the definition by itself will not suffice, since many of the Committee seem to be of opinion that the same regime should not be applied to all international rivers. A distinction must therefore be drawn between the various rivers.

In the statement which I made yesterday (1) I upheld the view that the distinction to be applied should be based upon existing factors. I proposed that rivers should be divided into three classes. After defining an international river, we should proceed to enumerate international rivers of the first and third classes on account of their greater importance. It would not be necessary to enumerate those of the second class, since this class would consist of all those which belong neither to the first nor the third.

To sum up,—I do not think there is any contradiction between definition and enumeration; after having stated the terms of the definition, it would be necessary to make an enumeration or classification.

ADMIRAL PRICA (Serb-Croat-Slovene State; speaking in French). — When I tried to formulate a definition, and examined the factors suggested by General Mance and M. Seeliger, I came to the conclusion that the difficulty of our task arose from the fact that the Draft Convention confuses navigation and commerce. We claim freedom of navigation generally, and in the same breath proceed to fix import and export duties; for this reason our work has no clear and definite starting-point. This fact is also responsible for the prolonged discussions and everlasting questions: What is the aim? What do we wish to internationalise? In my opinion the question at issue is freedom of navigation, and also—and more especially—freedom of commerce. For the sake of clearness, however, we must separate these two points.

The principles of freedom of navigation can be very speedily defined. For instance, taking as a basis the right of landlocked States to have free access to the sea, and the right of non-riparian States to have free access to landlocked States, and assuming that we wish to define freedom of navigation on the basis of these rights, we could very speedily find a suitable formula. For instance, we might say that any navigable waterway which serves several States as a means of communication with the sea shall be regarded as an international waterway. I think, of course, that no riparian State can be forced to renounce its territorial rights, and that it will continue to exercise them whether the waterway is internationalised or not. No distinction will be made in the treatment afforded to flags of the Contracting Parties upon an internationalised waterway thus defined. Such would be the general principles of freedom of navigation.

The question of ports must be approached in such a way that no riparian State will be compelled to afford the same treatment to foreign flags as to its own flag. This is a consequence of territorial law. For instance, should a State authorise a

(1) See p. 46.

commercial company of its own nationals to construct special docks on the shore for its vessels, or should it reserve a specially favourable situation for the landing-stage for vessels of its nationals, can that State be bound to afford the same privilege to foreign vessels? I think not, for its own citizens have duties to perform towards the State which are not binding upon foreign nationals, and they therefore have the right to demand more favourable treatment from their own State. We might, however, stipulate that no differentiation should be made between the nationals of different foreign States except when the riparian States of one and the same river mutually concede certain privileges to vessels flying their respective flags upon reciprocal conditions.

The principle of freedom of commerce is, however, very different from the principle of freedom of navigation. This constitutes the greatest difficulty in our work. This is the Achilles' heel of the Draft Convention, which in Article 2 affirms the free exercise of navigation, but in Article 3 lays down that this right shall entail complete equality for the subjects, property and flags of all Contracting Parties. This is no longer navigation,—it is **commerce**; it is subjecting the import and export trade of a State to special rules. This is a task which has not hitherto been attempted. Perhaps we can find a practical formula for this also; at any rate let us try!

In making these remarks my sole object has been to bring to your notice the difference between freedom of navigation and freedom of commerce, and to emphasise the fact that we shall attain our object more easily and directly if we speak quite openly of navigation and commerce and clearly distinguish between the two,—in other words, if we speak on the one hand of vessels, flags and crews, and on the other, of cargo, passengers and goods. If we confuse all these by using the expression *navigation*, I fear that we shall not find the desired formula. At all events I very much doubt whether the position would be clear to captains and ship-owners, or to harbour-masters and Customs officials.

M. PLANAS-SUAREZ (Venezuela; speaking in French). — In the opinion of the Venezuelan Delegation, the system of definition raises great difficulties. It is impossible to formulate a definition without encroaching upon the independence and sovereignty of States. In the first place we must state the principle involved, and recognise the two aspects from which rivers must be regarded, namely the sovereign rights exercised over them by States and freedom of navigation.

The provisions of the Congress of Vienna have often been misunderstood and interpreted in a manner at variance both with their letter and spirit. An attempt has been made to regard them as involving an absolute right, whereas they are merely the expression of a liberal principle which has been generally accepted, and, in practice, are completely dependent for their application upon agreements between the States concerned, to special provisions and to a series of regulations, due regard being paid to the special circumstances on each river and of the countries through which it passes. As may readily be seen, the fallacy consists in regarding a duty which is only of a moral nature as a legal duty incumbent upon a particular State, and in regarding as a right a privilege which can only be accorded with due regard to the mutual interests of countries concerned. It would be impossible to imagine an international act affording special privileges to one of the Contracting Parties and injuriously affecting the rights and aspirations of the other, except in the case of a State vanquished in war.

With regard to rivers passing through more than one country, special note should be made of the fact that the position of an upstream State can in no circumstances constitute a disadvantage, but is on the contrary in its favour. It follows, therefore, that the State which owns the lower waters of a river cannot be subjected to a servitude or bound by obligations which conflict with its rights of territorial jurisdiction or with its own sovereignty. It is inconceivable therefore that a State should at any period of its existence renounce its proprietary rights. It is sole mistress of its waterways as of its communications on land, even though special circumstances which are usually dealt with by public treaties afford to neighbouring States facilities for using these routes in their own interests in return for equitable compensation. Obviously an exception must be made in cases where internal navigable waterways have been thrown open to international shipping by spontaneous act of the sovereign Power,

as has been done by us to a certain extent on the river Orinoco and Lake Maracaibo. Apart from this, however, conventional law applies.

As long ago as 1859, Venezuela and Brazil signed a treaty on inland navigation based on the utmost possible degree of freedom. With Colombia we took the initiative in opening negotiations for the conclusion of a navigation treaty *based on principles of equity and mutual advantage*. In all her constructive legislation and in all treaties concluded by her, the Republic of Venezuela has affirmed in the widest sense the principle which was subsequently enunciated in Article 23 (e) of the Covenant, but I wish to state clearly that my country will not accept any conditions which conflict with its sovereignty, and in the name of this sovereignty it maintains that rivers which pass through its territory are now and for all time the exclusive property of the State. Any stipulation to be signed by Venezuela with regard to navigation upon rivers passing through her territory must embody recognition of the truth of this indisputable principle. Having stated the principle upheld by Venezuela with regard to inland navigation, I should be very glad if this Conference could see its way to lay down side by side with the principle that *the regime to be applied to rivers must be based upon freedom of navigation*, a further principle that *riparian States alone are competent to regulate navigation upon rivers situated in or flowing through their territory, and that, with a view to the better working of rivers of common concern, the riparian States should come to an understanding with regard to the regime to be established*.

M. MASENG (Norway; speaking in French). — My country, Norway, owing to the part played by her in maritime transport, takes a great interest in the discussions upon this Convention. I should also like to say a few words with regard to the question discussed yesterday evening, which is of fundamental importance to the whole Convention.

Yesterday evening we listened principally to the views of those in favour of the system of enumeration. Nevertheless, while listening to the arguments of the delegates who favour this method, I observed—and this is worthy of particular notice—that the supporters of the system of enumeration are actuated by entirely different aims and motives. Up to a certain point they agree. The Netherlands Delegation desires a very liberal regime to be applied to a certain number of important waterways which have already been declared free by special acts. The Roumanian and Polish Delegates also wish a regime of freedom to be applied to a certain number of waterways of general international concern which possess commissions composed of delegates from non-riparian States as well as from riparian States. This applies to a limited number of rivers upon which freedom of navigation has already been introduced in virtue of special acts. So long as it is a question of rivers upon which freedom of navigation is already guaranteed, the supporters of the enumerative method are in agreement. But this is not the point which mainly concerns us. This point is the regime to be applied to rivers which are not internationalised by special acts, and upon which freedom of navigation is not yet guaranteed by such special acts.

We must decide whether we wish to make a step forward or not. In regard to this question, the supporters of the enumerative method are entirely in opposition. The Netherlands Delegation desires—and this is the important point—that treatment equal to that accorded to nationals should be applied to subjects of all States upon all existing waterways, not only the class which has been called common rivers to distinguish them from rivers of general international concern, but also upon national rivers—in other words, the utmost conceivable degree of liberty. The Roumanian and Polish Delegations, on the other hand, consider that the so-called common rivers are the common property of riparian States and that the latter are entitled to dispose of them as they may think best suited to their own interests. As regards these rivers, they simply wish to express a hope that the principle of freedom will be applied as far as possible,—a suggestion which is not worth very much. With regard to national rivers, these delegations are not prepared to accept any restrictions upon the sovereignty of riparian States. Between these two extremes which are at variance except with regard to the formal question of the method of enumeration, it will, I think, be advisable and in conformity with the spirit of the Covenant to adopt a compromise,

in other words, something which is neither so protectionist as the proposals of the Polish and Roumanian delegates, nor so liberal as the Netherlands programme. In order to guarantee freedom of communications as laid down in the Covenant, we must take measures to ensure that navigation shall be free, not only where such freedom has already been accorded under special agreements, but also generally upon rivers passing through more than one State, or purely national rivers which may be regarded as possessing an international character. If the question be regarded in this light, it is obvious that no contradiction exists between the two methods of enumeration and definition. If we wish to make a step forward and enumerate rivers which have not hitherto been internationalised by special acts, we must obviously establish a criterion for such rivers. We cannot avoid a definition and we must therefore fall back upon the *Green Book*.

The CHAIRMAN (speaking in French). — Your hearty applause shows that this interesting speech has thrown considerable light upon the question, and I think that I shall be interpreting the unanimous wishes of the Committee—I do not think that MM. Lely, Popesco and Wielowieyski have any objection—in proposing that we take the system of definition as a provisional basis.

M. WINIARSKI (Poland; speaking in French). — I would avail myself of the Chairman's, invitation to opportunity, point out that we have been credited with intentions which are not ours. What the Norwegian Delegate has said was said to me yesterday by another delegate. You only admit freedom of navigation, he said to me, upon international rivers properly so-called. This is a misunderstanding. On March 23rd, the Polish Delegation said that it was prepared to make any concessions and any sacrifices. The Polish Delegation is opposed to the system of definition because it involves uniformity, and I think that in international affairs, when it is a question of settling such diverse questions, uniformity is a chimera which may involve an element of danger for certain States, and will only benefit a limited number. During our discussions at Paris we were obliged to supplement freedom of navigation, not only by equality of treatment as between riparian States, but also by the granting of national treatment on the part of riparian States to all. This equality is not based upon reciprocity. Nevertheless it appears to me that reciprocity should be the basis of any international administration. We are now making a certain number of riparian States concede something for the exclusive benefit of other States; there can be no reciprocity in this if we treat in a uniform manner all rivers, regardless of the different conditions of each. The granting of national treatment implies questions of an exclusively commercial and economic nature. The *Green Book* itself has had to admit that it is impossible simply to establish the principle of freedom of navigation and nothing else, if a uniform system is desired. This is the principal defect of the system of definition.

There are still other objections. If we accept the principle of a uniform regime, the regime applicable to common rivers will be dependent upon the consent of all States Members of the League of Nations, and, in the words used by M. Charguéraud at the Plenary Conference (2), this is absolutely inconceivable. If a State possesses a national waterway it may, in granting freedom of navigation, establish any regime which it may think fit, but if, by some accident of political geography, this river coincides with a frontier for a few kilometres, the two States, which are, if you like, the co-proprietors or neighbours of this river, must obtain the consent of all States throughout the world. I will go even farther—this point was also emphasised at Paris—it is not only a question of laying down a principle, as was done in the Treaty of Vienna, which has been so misconstrued; it is also a question of organising a series of sanctions which have not hitherto existed. The establishment of a uniform regime does not merely imply giving to all States a legal interest in every common river, no matter how unimportant it may be, but also provides them with legal means for laying every dispute before the League of Nations. You will readily see, therefore, what unending legal proceed-

(1) See p. 17.

(2) See p. 23.

ings may result from this provision. It has been said that if we do not make a uniform regime we might just as well go home, because international rivers already possess navigation acts. Hitherto, however, I believe that the navigation commissions of several rivers have met and have not been able to come to an agreement. It has been decided to postpone the whole question until the general lines of the provisions to be drawn up for each particular river have been laid down by the Convention. I maintain my view that, in regard to the method to be applied, the system of enumeration is the only practical one, and that the system of definition involves insurmountable difficulties. However, since the Chairman wishes us to make an attempt, we shall soon see.

The CHAIRMAN (speaking in French). — We are very grateful to M. Winiarski for his clear and interesting statement of his point of view. He has used some forcible arguments, but, subject to the reservations arising out of his speech, he said in conclusion that he was not unwilling to join us in entering upon a provisional discussion of the system of definition, in other words, of Article 1.

The meeting adjourned at 11.30 a.m.

FOURTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Thursday, March 31st, 1920, at 4 p.m.)

DISCUSSION OF ARTICLE 1 (CONTD.)

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 1 (Contd.)

Sir Louis KERSHAW (India). — Among so many experts I feel some hesitation in speaking, but listening to our discussion during the last two days I have felt considerable doubt in my own mind, arising from the confusion which General Mance pointed out yesterday, between the terms *régime* and *administration*. I thought, it might perhaps simplify our discussions, and that in the Convention itself it might be possible to draw a distinction, if when we spoke of freedom of navigation we did not use the words *international waterway* but *free waterway*, meaning that navigation was free on the waterway in question, and that when we used the words *international waterway* we meant to indicate some degree of international control or administration. I think the confusion in the discussion has arisen from the fact that in this Convention we use the term *international waterway* on all occasions. It would be understood that the waterway would be free, but would not be international.

M. VALLOTTON (Switzerland; speaking in French). — I wish to rise to a simple point of order. With a view to preventing the possibility of wandering from the point, we should begin by considering those amendments the text of which we have already received. We can then consider any other proposals or suggestions which may be made.

Sir Louis KERSHAW (India). — I have handed in an amendment to Article 1, which I will read. At the end of paragraph 1 add the words :

That a river shall not be deemed to be an international waterway because its navigable course, being otherwise wholly situated within the territory of one State, crosses or bounds a small detached portion of a foreign parent State, such detached portion being otherwise wholly surrounded by the aforesaid territory.

M. KASAMA (Japan). — Our amendment (1) is intended to make the regime of internationalisation of waterways applicable to the tributaries of international rivers. This is a principle which has long been recognised, and has been well established since the time of the Congress of Vienna; it was proposed by several delegations at the Commission of Enquiry. In our opinion there is absolutely no reason why we should make a distinction between the tributaries and the main stream, provided that ordinary navigation is possible on them, and that they afford access from the sea to the commerce of other nations. There may be some cases where tributaries which are regarded as non-international under the original provision of the present article may

(1) The text of the Japanese amendment is as follows :

Paragraph 1, substitute for (b) the following :

That naturally navigable tributaries of international waterways are assimilated thereto.

be even more serviceable for international commerce than some parts of the main stream itself. Supposing the tributary were entirely independent of the international regime, and supposing the sovereign State can do anything it pleased to prevent the water from flowing into the main stream, the navigation of the international river itself might in consequence be suspended. It is absolutely essential that some provisions at any rate should be inserted enabling at all events this kind of tributary to be included in the international regime in order to prevent interference with navigation. The Treaty of Versailles lays down that the present Convention shall supersede the provisions of the Treaty of Peace as regards the international regime of waterways. Article 337 of the Treaty in question does not exclude tributaries of international rivers, and I see no reason why we should not adopt the same principle in our Convention; there is nothing to justify a different treatment for the international rivers dealt with in that Treaty and those dealt with in the present Convention. The advance made in the Treaty of Peace must be maintained by our present efforts, otherwise there will be a deplorable retrogression in the matter of freedom of navigation. This is all the more true because, if we adopt the British proposal to consider, in the definition of international rivers, the element of suitability for ordinary commercial navigation, we have to include under the general regime of internationalisation all navigable tributaries suitable for commercial purposes. But should this view not be adopted by the Conference, the Japanese Delegation proposes to include in this regime at any rate those tributaries which, although only flowing through one State, empty themselves into an international river at a point between which and the sea the river crosses or forms a frontier. This proposal is exactly the same as that made at the Commission of Enquiry by the British, Belgian, Greek and some other delegations and explained on page 67 of the *Green Book* (1). This appears quite reasonable, and, if we wish to attain the required compromise, this must surely be the solution of the present problem.

M. HOSTIE (speaking in French). — The question raised by the Japanese Delegation was considered at Paris. Two entirely contrary views were put forward. The first of these was propounded by the Netherlands Delegation. This delegation had submitted a complete draft scheme which was intended to serve as a basis for the work at Paris side by side with the draft schemes prepared by the British and French Delegations at the beginning of the Peace Conference. In the scheme of the Netherlands Delegation, international river systems were regarded as a whole. It followed that all the tributaries of an international river would be automatically internationalised throughout the whole of that part of their length which was naturally accessible from the sea. Such was the purport of the definition formulated at that time by the Netherlands Delegation. On the other hand, the Roumanian and Serb-Croat-Slovene Delegations wished to limit the regime of internationalisation to the main stream, excluding all tributaries.

Between these two extreme views there were two minor distinctions, one of which was advocated by the Belgian, British and Greek Delegations. It was to the effect that those tributaries should be internationalised which, without crossing or separating at least two countries, flowed into the international river at a point above that portion providing access to more than one State. For instance, supposing that the frontier between the State nearest the sea and a State further away is situated at a point A upon the river, the tributary must flow into the river at a point B above point A. The other distinction, which is embodied in the *Green Book*, was to the effect that only those tributaries should be internationalised which are in themselves international because they separate or cross two or more countries.

It is perfectly true that the system now proposed by the Japanese Delegation is that provisionally adopted in the Treaties of Peace. It is also true, as the British Delegate has pointed out, that it is the system of the Congress of Vienna. To a certain extent, therefore, the system finally adopted at Paris is a retrogression both from the Congress of Vienna and the Treaties of Peace. For my part I shall be glad to see the amendment of the Japanese Delegation adopted, provided that the Conference feels justified in taking this course.

(1) See p. 418.

M. REINHARDT (Austria; speaking in French). — The amendments which I have had the honour to submit (1) on behalf of the Austrian Delegation are in principle similar to the amendments proposed by the Japanese Delegation. The reasons which prompted our amendments are the same. I therefore feel that I need not repeat what has already been said by the Japanese Delegate. You will allow me, however, to make brief reference to one particular point. The principle of extending the international character of a river to tributaries may be justified from the standpoint of communications. A tributary, considered by itself, may possibly not provide a country with direct access to the sea by water; but it may sometimes happen that communication with another country is carried on by rail. Goods may be sent to a waterway by rail and continue the journey by water. In practice this amounts to access to the sea for the country making use of this waterway. This, however, is a mere detail. Generally speaking, if we desire to be reasonable there is no reason for excluding tributaries which fulfil the same conditions as the rivers themselves.

M. HAAS (Secretary-General of the Conference; speaking in French). — With reference to the amendments submitted by the Japanese and Austrian Delegations, I merely wish to define the scope of these amendments by referring to the map given on page 64 of the *Green Book* (2). On this map those portions of a river system which are internationalised in accordance with the definition are indicated by dots. It may be seen that according to the map certain classes of tributaries do not come under this definition, especially rivers (e) and (g). The effect of the Japanese amendment and of the first Austrian amendment is to include these two examples (e) and (g) in the internationalised systems. The Japanese Delegation has stated verbally that, if necessary, it would be content with the inclusion in the international regime of river (e) only. This is the second and subsidiary amendment proposed by the Austrian Delegation. There are therefore two distinct cases in regard to which the Conference can very easily pronounce an opinion.

M. de WALTER (Hungary; speaking in French). — Yesterday and today we have heard various views as to which waterways should be regarded as international. Different standpoints have been adopted by the Roumanian and Italian Delegations. In my opinion we must at all events have a basis for discussion, and for this reason I have ventured to submit to you the following draft, which is simply a combination of the Chinese, Roumanian and Italian proposals.

In applying the present Convention, the following shall be declared as :

(a) *International waterways* :

Rivers and river-systems so defined in the Treaties of Peace, or which have been internationalised by special Acts;

(b) *As waterways of international concern* :

All parts—accessible to ordinary commercial navigation to or from the sea—of a waterway which, in its course accessible to or from the sea, divides or crosses different States; and also all parts of any waterway accessible to or from the sea which connects with the sea a waterway included in the following definition :

No watercourse shall be considered as a “waterway of international concern” unless it is or can be made accessible from the sea to navigation during an average minimum period of 150 days per annum by vessels drawing at least... tons, excluding any haulage operations carried out upon the banks.

(c) *As national waterways* :

Waterways not mentioned in (a) or (b).

(1) The text of the Austrian Amendment reads as follows :

Alternative A.

Insert in paragraph 1 between the words *and also* and *all*, the words :

All tributaries, naturally accessible from the sea, of international waterways and.

Delete paragraph (b).

Alternative B. If the amendment to Alternative A is not adopted, add at the end of paragraph 1 the words : *finally, all tributaries, naturally accessible from the sea, of international waterways flowing into the principal artery at a point such that the part of the principal artery below this point separates or crosses several States.*

(2) See p. 419.

In paragraph (a) I have attempted to formulate a definition for international waterways. In the first paragraph of (b) I have adopted the definition contained in the *Green Book*, but I think it would be advisable to add after the words *all parts* the word *naturally*, and the same addition should be made three lines lower down after the words *all parts of any waterway*. This approaches the amendment which the Italian Delegation has submitted to us. I have also borne in mind the Serbian and Chinese proposals. I would beg the Conference to consider this proposal, for I think that it is calculated to hasten the accomplishment of our task.

M. Mirza HUSSEIN KHAN ALI (Persia; speaking in French). — I have listened with keen interest to the proposal submitted by the Japanese Delegate, and I should like to state that I support it. I think that a useful purpose will be served if I, as a representative of an Asiatic country directly concerned in the discussion, were to give a short statement defining the attitude of my Government upon this matter. As I stated during the general discussion of the Draft Transit Convention (1), Persia is in favour of the widest possible measure of freedom and of the treatment of all countries upon an absolutely equal footing. Her ancient civilisation and the spirit of philosophical tolerance which she has always displayed, and the troubles through which she has passed as a result of her geographical situation, all combine to make her hope that all nations will make the greatest possible sacrifice for the good of mankind as a whole and in the cause of freedom.

The special situation of my country is worthy of a short explanation. Persia is a riparian of the Shat-el-Arab from the Persian Gulf as far as Mohammerad. The Shatt-el-Arab is a waterway navigable by large vessels, and continues to bear this name above the Persian frontier as far as the junction of the Tigris and the Euphrates, and has no independent source of its own. Neither the Tigris nor the Euphrates is the principal river, and neither is the tributary of the other; both rivers are tributaries of the Shatt-el-Arab, which is joined on Persian territory by another river navigable from the sea,—the Karum, a national river which was thrown open to the commerce of all countries by Persia in 1888. A large proportion of the goods from foreign countries reaches Persian markets via Bagdad, proceeding by the Tigris for a distance of 820 kilometres. It would be against nature if the Tigris and Euphrates, which are international rivers passing through rich and fertile regions constituting the paradise of Biblical times, are not thrown open for free navigation to all countries.

Though Persia did not formally adhere to the Treaty of Vienna of 1815, the principles of this treaty have already been applied by her. She considers that she is entitled to claim the advantages contained in the provisions of 1815, and she does not consider that the institution of different principles for each continent would be in conformity with general interests or with the spirit of Article 23 of the Covenant. She declares therefore that, subject to reciprocal conditions, she is prepared to accept the regime embodied in the Paris scheme, in order that the whole of the navigable waterways which unite in the Shatt-el-Arab may be opened for free navigation to all countries without distinction. This principle of free navigation seems to her to be quite compatible with the exercise of her full sovereign rights. In a word, the Persian Government regards the *Green Book* as a distinct advance upon the previous legal regime applied to international waterways.

M. A. FREIRE D'ANDRADE (Portugal; speaking in French). — If I understand aright, two systems have been advocated during the discussions which have taken place;—that of definition and that of enumeration. The latter seems to me, however, very difficult to apply, and as the Swiss Delegate very rightly said, we should most likely have to spend a long time here if we attempted to do so.

The system of definition also involves difficulties, and these are likely to prove insurmountable unless the definition is confined to such general terms that it will not give rise to justifiable anxiety on the part of States which do not wish to see their sovereign rights diminished beyond admission of the principle of free navigation upon their waterways. This restriction, moreover, must be governed by local conditions,—

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 141

geographical, political and economic. It seems to me therefore that a mixed system might be adopted, in other words a definition which is to apply to the future, and, as regards the past, an enumeration of those waterways which have already been opened to free international navigation by conventions or agreements, as in the case of the Zambesi in our Colony of Mozambique.

No State can surrender its rights when such surrender is likely to create for it internal difficulties which may be considerable. Though the Limpopo, a river in our East African colony, may be opened to international navigation as far as Chai-Chai or Chubuto, where we have an efficient fiscal administration, beyond the latter point it passes through deserts which are uninhabited because at the present time they are uninhabitable and where, as any system of control would be difficult, free navigation would create possibilities for contraband trade, especially in spirits, arms and munitions. This possibility must be prevented, more especially at the present time, seeing that the native problem is becoming more and more difficult to cope with, and that the doctrine of Africa for the Africans is openly preached. I am convinced that all here admit, desire to adopt, and are prepared to defend, free navigation upon navigable waterways. This freedom, however, is bounded by certain limits when the vital interests of a country are at stake, and the country itself is the best judge of these limits. The Portuguese Delegation therefore considers that its amendment to the effect that treaties and agreements already in force shall be enumerated, whereby certain navigable waterways which may be enumerated in the Protocol are opened to international navigation, is fully justified.

I will now read the draft amendment :

ARTICLE 1. — For the purposes of the present Convention, the following will be considered as *waterways open to international navigation* :

(1) All rivers which, traversing more than one State, or forming a frontier between States, flow into the sea and are accessible, over their bars, for sea-going vessels.

It is understood that :

(a) The possibility of transhipment from one vessel to another is not precluded;

(b) Lateral canals constructed in order to remedy the defects of such a waterway are assimilated thereto;

(c) Tributaries are to be considered as separate waterways.

(2) Such waterways, natural or artificial, as have already been declared international or open to free navigation by conventions or agreements.

ARTICLE 2. — Freedom of navigation on navigable waterways is recognised, in principle, so far as it is compatible with the sovereignty of States. Each State will fix, within its own territory, the highest point on a river above which navigation will be reserved for the national flag. In respect of rivers which separate two or more States, this point will be fixed by a Commission consisting of representatives of all these States.

M. MONTARROYOS (Brazil; speaking in French). — The very first time I addressed you, I pointed out the necessity of defining more clearly the exact meaning of certain words and certain expressions, such as *internationalisation* and *international river*. Yesterday I stated that if I were to propose an amendment to Article 1, it would consist in replacing the words *international waterways* by the words *waterways of international concern*. Yesterday I noticed that there was some confusion in the Committee with regard to the meaning of these words. It is quite clear that the meaning attached to them varies, and every time one of us uses the words *international river* he attaches thereto a significance which very often is not shared by many of his colleagues. For these reasons I feel it my duty to lay before you an amendment whereby the words *international waterways* are to be replaced by the words *waterways of international concern*. Every time therefore that this phrase occurs it would be replaced by that which I propose.

Since having submitted this amendment, I have received that of the Hungarian Delegation (1), which recognises as international waterways such rivers and river systems as have been declared international in previous treaties. This is a point worthy of consideration. We must at all events eliminate any possibility of doubt as to the meaning of the word *international*. Obviously we do not intend to interna-

(1) See p. 71.

tionalise certain rivers in the sense usually applied to the word, more especially in the legal sense in which it is current in America,—in particular the Brazilian conception, which I explained to you briefly, pointing out that we regard international rivers as rivers of international concern. Internationalisation in the ordinary sense of the term implies somewhat too great renunciation of natural sovereignty. Our reservations are based on this aspect of the question, though we accept the jurisdiction of the League of Nations. This jurisdiction—in particular the decisions of the Court of International Justice—applies as between States which have joined the League of Nations. No sacrifice of sovereign rights, therefore, is involved on the part of these States in respect of the administration, policing and navigation regulations of rivers. In these circumstances I think we may accept the principle of the present Convention, subject merely to the clear understanding that there is no intention of internationalising rivers in the *old* sense of the word, if I may say so.

M. HOSTIE (speaking in French). — The question raised by M. Montarroyos is far from being a mere question of wording. It is indeed a question of fundamental principle. It really amounts to this,—what is internationalisation? And I am glad to have this opportunity of telling you clearly and positively that the unanimous intention of the authors of the scheme before you was that the use of the term internationalisation of a waterway was never intended to imply the existence of any administrative system other than that of the riparian State. If it suits the convenience of certain States to draw up an agreement between riparians, or between riparians and non-riparians, for the purpose of creating a more or less extensive system of international administration for a waterway, there is clearly nothing in the Convention to prevent it. On the other hand, by the internationalisation of a waterway, the Convention in no way presupposes any such joint administration as a necessary consequence. I think this explanation is sufficiently clear and precise to prevent any misunderstanding in this respect. This is borne out by the fact that our original text (1) included the words *waterways of international concern*, proposed by M. Montarroyos.

The Netherlands Delegate then pointed out that this conception which we called that of *waterways of international concern* was absolutely identical with that of the Congress of Vienna. This was perfectly true; indeed by simply reading Article 108 and the following articles of the Treaty of Vienna you will see that the germ of the ideas reproduced in our scheme was contained in that instrument. In addition to the conception of freedom and equality, questions of charges, customs, works and also police regulations are dealt with therein. All the principal problems of internationalisation were therefore touched upon by the Treaty of Vienna. For this reason, at the proposal of the Netherlands Delegate, the words *international waterways* were substituted for the words *waterways of international concern* at the Paris meeting. The terminology was amended in order to adopt that of 1815, but this amendment was unaccompanied by any alteration of the substance of the text. Moreover, in the second line of the text of the *Green Book*, care was taken to place the words *international waterways* between inverted commas, in order to show clearly that the intention was simply to use an expression consecrated by previous use, and that no modification of the ideas involved was intended.

Mr. H. O. MANCE (Great Britain). — I have been very much interested in the various points which have been raised during the last two meetings, and I desire to say a few words in support of two or three of the delegates who appear to me to have expressed most accurately the intentions of the framers of this project. I am assuming that we have decided to adopt the system of definition, but in trying to arrive at that definition, there has been a tendency to consider the Convention as a kind of statutory act of navigation for rivers placed under a special form of international administration, that is to say, a definition based on different forms of administration. I myself think we are all agreed that the Convention must above all be a world-wide Convention. It cannot be a world-wide Convention if it only applies to rivers with certain forms of

(1) See p. 393.

administration. Administration is purely a local question. If we desire a worldwide Convention, then, in drafting a definition, we must keep in view the fact that the principles of Article 23 of the Convention should apply to the waterways of the world to the greatest extent possible in the present circumstances, that is to say, our definition should be based on the principle of freedom. I will give one illustration. The Niger is an international river, with the same degree of freedom as on the Rhine; the same applies to certain rivers in South America. Obviously, the systems of administration are quite different. I was very glad that M. Hostie explained to us—we greatly needed the explanation and I should like to confirm it—that the form of administration is quite immaterial to the main principles of the Convention. If you read the first sentence of Article 10, you will see the principle clearly laid down that it is the riparian State which is responsible for administration unless there is some agreement, quite outside the Convention, which prescribes some other form of administration. I should like to refer to what was said by the German Delegate with regard to the distinction between *regime* and *administration*. Article 338 of the Treaty of Versailles, which bears closely on this Convention, prescribes that the regime in Articles 332 to 337 shall be superseded by one to be laid down in this General Convention which we are preparing. Nothing is said about administration; the articles concerning administration occur further on, and were purposely kept apart in view of this point which M. Hostie has now raised and which I am endeavouring to emphasise. I should like to take this opportunity of referring to another point which was raised by the Delegates of Poland and the Serb-Croat-Slovene State, namely, that we were interfering with commerce and extraneous questions in this Convention. If my thesis and that of my colleague from Brazil and several other speakers is accepted, as I think it is, then it is important to bear in mind, when considering this definition, that our Convention must stipulate which rivers are free and what we mean by such freedom. In doing so, it is of course necessary to refer to the various conditions for the exercise of free navigation. Reference to what might be considered questions of commercial economy is justified only in so far as it is necessary to define what is meant by freedom. But it is quite impossible to say that navigation is free, and leave it at that; no jurisdiction could interpret such words. We might modify articles later on, but that is a question of detail. The principle is that we desire to prescribe the greatest possible freedom upon which general agreement can be reached, for as many rivers as can be agreed upon, and we must further state what we mean by that freedom.

I will now deal with the general definition, and should like to draw your attention to the fact that the definition proposed by the Netherlands Delegation is conceived with precisely the same intention as that of the authors of the definition as it appears in the *Green Book*. What does the Netherlands Delegation say? It wishes to include the rivers considered *free* by the Congress of Vienna, and that is exactly the starting-point of the Commission of Enquiry. I would point out that the *Green Book* definition takes explicit account of tributaries. The definition of the Congress of Vienna was not very clear on that point,—it refers to tributaries more or less incidentally. In that respect, therefore, the *Green Book* definition brings the spirit of the Vienna definition up-to-date. The Netherlands Delegation asks what we mean by *access from the sea*. It is merely an attempt to define what we mean by *navigable*. If it is considered that the word *navigable* suffices, and that the words *access from the sea* do not give any clearer expression of the meaning, that is a question of detail. There is also the question of the addition of the words *with or without transshipment*. I do not suppose transshipment was seriously practised at the time of the Congress of Vienna. It has been introduced because in modern navigation there are relays of shipping proceeding much further upstream than in the old days, when navigation was limited perhaps to the one vessel which entered the mouth of the river. The definition in the *Green Book* includes lateral canals,—a very necessary addition. Lateral canals did not exist at the time of the Congress of Vienna, or they would no doubt have been included. In reality, therefore, the proposal of the Netherlands Delegation is conceived in exactly the same spirit as the proposals of the *Green Book*. I think that the two proposals might be taken together, as a very useful basis in the preparation of our Convention. Later you may possibly decide to give somewhat reduced facilities on certain national waterways not included in this Convention, and may consider it desirable to give greater

facilities on certain special waterways; such an addition can be made later. I hope that, in discussing Article 2 and the following articles, we shall take for our basis the definition in the *Green Book*, and that of the Netherlands Delegation, which so far is its sole rival except for the Hungarian definition,—and this after all only adds to the original definition all the other amendments put forward. We can then proceed to discuss Articles 2, 3, 4 and 5, which lay down the regime.

M. WINIARSKI (Poland; speaking in French). — I should like to have some explanation of General Mance's remarks in reference to his allusion to the Polish and Serb-Croat-Slovene Delegations.

Mr. H. O. MANCE (Great Britain; speaking in French). — I said that the Polish and Serb-Croat-Slovene Delegations supposed that it was our intention in this Convention to deal with economic questions. I added that it was impossible to explain clearly what we meant by freedom of navigation, without making some allusion to measures relating to other questions, but that references to economic measures should be confined to those necessary in order to establish freedom of navigation.

M. WINIARSKI (Poland; speaking in French). — I have two questions to put to General Mance. If I am not mistaken, freedom of navigation is not simply freedom; it involves certain consequences. As the British Delegate has said, if it were otherwise there would be no question of any jurisdiction. Let us take a case where there is no international administration entrusted to a commission or to a non-riparian State. I think that General Mance referred to the responsibilities of riparian States from the point of view of administration. Is this really so?

Mr. H. O. MANCE (Great Britain; speaking in French). — To the second question I reply : certainly. As regards the first, I think that we must avoid the imposition of restrictions upon freedom of navigation by too detailed a system of police regulations or by too rigorous a system of customs examinations,—of cargoes, for instance. We must none the less make provision for customs and police regulations. When we speak of customs equality, we mean regulations relating to flags, and no change is contemplated as regards higher customs duties imposed by certain States upon goods of a particular origin. There is no question whatever of imposing customs equality on all the States of the world.

M. de WALTER (Hungary; speaking in French). — I should like to make a short statement with reference to General Mance's remarks. I did not say that there was any question of a special proposal on the part of Hungary; I stated that my suggestion was simply a kind of combination of the amendments which I had heard propounded yesterday by the Brazilian and Roumanian Delegates.

M. BIGNAMI (Italy; speaking in French). — Before explaining the Italian view with regard to Article 1, I should like to read you a few words contained in a little book written by M. Kaeckenbeeck. On page 26 we read :

When the Po became the national river, Italy did not close it to foreign flags; and in 1885 she suggested the opening up of national rivers as well as international rivers.

Italy is a country of freedom; she has always sought to give the greatest possible measure of liberty, both to her own citizens and to citizens of other countries. It is perhaps as well that the Conference should know that Italy is carrying out very considerable works on her navigable waterways, upon which she has already spent many millions. She intends to connect Milan with the Po by a great canal about 70 kilometres long; this will take vessels of from 600 to 1,000 tons. She is spending money to improve navigation upon the Po. M. Valentini, the engineer in charge of these works, is present at the Conference. We Italians would be very glad if the members of this Conference would come to Italy one day and see the work which has been done there.

In the Italian view, inland navigation is extremely important. She is seeking to develop her means of transport by water as much as possible; in spite of the great development of railways, they are still of very great importance, though they require

improvement. In fact, throughout the world, there is an ever-increasing tendency to increase the size of the unit. Transport by vessels of at least 300 to 600 tons is contemplated. On the Rhine, on the Danube, on the Volga and on several other rivers, vessels as large as 6,000 tons are in use.

The Italian Delegation proposes an amendment to Article 1 (1). This amendment deals with the definition of navigable waterways. It appears to me that if the Conference is to arrive at any definite conclusions we must single out Article 1 and its amendments, since a definition must be found. Many subjects have been discussed and at times the speeches made, although extremely useful, have dealt with questions of secondary importance; so far, however, no attempt has been made to find what should be the basis of the Convention,—that is to say, what constitutes a navigable waterway. Before defining national or international navigable waterways we must define what a navigable waterway is. Taking as our basis Article 1 in its present form, we should try to find a definition which will enable us to emerge from the present deadlock. As the German Delegate pointed out yesterday, it is always very difficult to arrive at a definition.

We know what the Romans said—I am not a lawyer, I am an engineer, but I remember it nevertheless—*definitio periculosa*. Nevertheless we must find a definition, or we shall have to fall back on the system of enumeration, and the difficulties will be the same as before. Indeed, in order to enumerate navigable waterways we must know, in the first place, whether a particular river does indeed possess the characteristics of a navigable waterway and can be included amongst the rivers dealt with in a convention of this kind. I have heard a good deal of talk here about treaties a century or more old; in particular the Congress of Vienna has been referred to. I do not live in the future, but I do live in the present, and I think it is a mistake to make constant reference to what happened a century ago, for political conditions have changed, and technical conditions have changed still more. We must not forget the important technical uses

(1) *Text of the amendment to Article 1 proposed by the Italian Delegation.*

ARTICLE 1. — The Italian Delegation proposes that Article 1 of the Convention should be modified for the following reasons :—

We cannot speak of internationalising a waterway unless the conditions are such that the waterway enables the State furthest from the sea to have an outlet, by means of the waterway, through the territory of other countries. Supposing for instance that a watercourse is of such a nature that it is navigable only by very small craft in some parts (in the Report reference is actually made to *any description of navigation*) it is certainly *naturally accessible from the sea*; but this fact does not enable a genuine goods traffic to be conducted upon it from the sea to the most distant State, and it cannot therefore serve the latter as an outlet to the sea.

According to the text of Article 1, the fact that a small tributary, crossing the frontier of two States, was accessible to small craft, even though perhaps only for a few days in the year, would be sufficient to cause not only the tributary, but also the river into which it flows, to be declared international as far as the sea, although there could never be any effective navigation upon it suitable for the transport of goods from the sea to the State situated above the frontier. The result of this might be that, contrary to general economic interests, difficulties would be placed in the way of utilising many rivers and torrents to better advantage, either for generating motive power or for purposes of irrigation. In some cases even technical improvements to the course of the river might be hindered; for there might be a certain apprehension—as also noted in the Report—lest the carrying out of these improvements should make the watercourse into an effective route for international traffic, whereas the route in its present condition, not being used for traffic of this kind, would be free from any control by other Powers. Since the moral obligation of every country to apply the governing principles of the Convention as far as possible is extended by the Preamble to include national waterways also, the fact that the number of international routes might be diminished would not lessen the benefits of the arrangement. Moreover, it would appear logical that only waterways possessing a certain degree of importance should be included in this category.

The Italian Delegation therefore proposes that Article 1 should be modified in such a way that, among the waterways to be internationalised, only those should be included which can be effectively navigated, from the sea as far as the point where the international character of the waterway ceases, by vessels conveying goods or passengers upstream.

In order to make this point clearer, the Italian Delegation proposes that only water routes capable of carrying upstream traffic of a certain importance, that is to say vessels of not less than 200 tons and for a minimum of 150 days in the year, should be internationalised; it is only routes of this capacity which could be described as affording an outlet to the sea to a country separated from it by the territory of one or more other Powers. Moreover, in order to avoid the imposition of an international servitude on the banks of watercourses, as for of the watercourses themselves, it is proposed that, on international waterways, vessels should be able to complete a whole journey from the sea to beyond the frontier by their own means of locomotion, without the aid of haulage involving the use of the banks. This would be understood to mean, as is stated on page 62 of the Report, that the tug and the vessel towed would be considered as a single craft, proceeding under its own power.

The Italian Delegation accordingly proposes to add to Article 1 of the Draft Convention on the International Regime of Navigable Waterways, after heading (c), the following paragraph :—

No watercourse shall be considered as an international waterway unless it can be navigated throughout from the sea, for an average period of at least 150 days a year by vessels of not less than 200 tons, without the aid of haulage from the banks.

to which rivers have been applied,—the utilisation of rivers for purposes other than navigation. We know that rivers have been put to various hydro-electric uses and we know that these are often of assistance to communications, since they permit electrical traction upon railways. As General Mance has pointed out, at the time of the Congress of Vienna practically no lateral canals were being made. Certain irrigation works had been undertaken, but on a much smaller scale than at the present day. To-day rivers are used for irrigation, for the supply of motive power, and for navigation.

Italy—and it was the Greek Delegate who remarked this during the general discussion—was perhaps the first to undertake important works. As long ago as the twelfth century she opened up important navigable waterways, and constructed irrigation canals. In the fifteenth century—I venture to say this in spite of the fact that I am an Italian—Italy produced Leonardo da Vinci, perhaps the greatest genius the world has ever seen, who carried out many of the works which were executed in Italy during this period. He perfected, though he did not discover, the system of locks. Locks were invented in Italy and Holland at about the same date. Can we forget all that has been done since that time, and ignore the great works continually being carried out upon waterways? Can we forget recent progress and think of nothing but the Treaty of Vienna? Surely not. It seems to me that a limit must be set to the internationalisation of waterways and rivers,—otherwise we should have the state of affairs referred to on page 67 of the *Green Book* (1), where the following appears :—

There was reason to fear in such a case that a State under whose sovereignty or authority this non-navigable part was situated would not proceed to carry out works of which not only would the exclusive benefits not accrue to it, but which also might result in immediately and automatically placing the entire upper part of the river under the international regime in virtue of the definition.

If we adopt provisions calculated to prevent rivers from being utilised to the best advantage, either for purposes of navigation or for any other purpose, we shall certainly achieve an object entirely contrary to that which we set out to attain. The Italian Delegation considers that it is necessary to amend some of the ideas contained in Article 1 of the Convention, which, in order to understand it thoroughly, must be read in conjunction with the commentary contained in the *Green Book*. On page 69 (2) of the *Green Book* the following appears :—

By "naturally accessible from the sea" is meant every part of a waterway, whether works have been carried out along its course or not, which has been or is in its natural state accessible from the sea for any description of navigation whatsoever.

Any description of navigation whatsoever may mean navigation by small rowing boats, a form of navigation which is of little importance to the nation in whose territory the waterway is situated, and of no importance at all from the international standpoint. We therefore feel that a distinction must be drawn between waterways with which the Conference must deal, and other waterways which may serve for minor navigation, but which do not concern the Conference. Take, for example, a waterway which forms the frontier between two States. There may be a minor navigation between one bank and the other, but from an international point of view such a river is of no importance. The important point is that a waterway which crosses or separates a number of States must be accessible for navigation by vessels of a certain tonnage.

The British Delegation suggested that the word navigation should be regarded as referring to ordinary commercial navigation. This definition represents a certain degree of progress, but we think that a more exact definition is required in order to enable the League of Nations to understand its task. Otherwise delusions might be entertained, or a certain state of mind might exist which in certain countries would increase the difficulties of administration. We are therefore of opinion that a limit must be fixed in order to define major navigation, not merely shipping coming directly from the sea, but navigation by vessels of large tonnage, in other words, vessels which are capable of carrying a sufficient quantity of goods to enable them to compete with railways. There has been considerable discussion as to what this tonnage should be,

(1) See p. 420.

(2) See p. 420.

especially in France. The French have developed their inland navigation; there is the Freycinet Act. They have spent a great deal of money and have established an important system, but it is a system for vessels of 300 tons. Germany, of whose inland navigation the German Delegate had good reason to boast, has established a system for vessels of 600 tons. It is sufficient to take as an example the great canals of Northern Germany. Nowadays canals for vessels of less than a minimum of 300 tons can hardly be constructed. For instance, even in France, when it was desired to establish a system of river transport upon the Rhone, schemes were prepared for vessels of over 600 tons. In the opinion of the Italian Delegation, if 200 tons were fixed as a minimum, this would be below what is regarded by technicians as the minimum necessary to enable canal transport to compete with transport by rail. If another course were adopted, small streams, hardly navigable by rowing-boats, but passing through two countries and flowing into a river of a certain importance, might have to be internationalised, although it was well known that not a single ton of goods had ever been transported over it from the sea. Such action would be the exact contrary of what we are here to do, namely, to develop inland navigation in each country to the utmost possible extent. It is for this reason that we have proposed a minimum of 200 tons. On certain rivers vessels of 200 tons may be able to pass, during three or four days of the year. Can such a river really be regarded as an important commercial waterway? Of course not; we are therefore of opinion that a time limit must be fixed. Turning now to certain other rivers, especially those situated in the north, where it freezes and where there is fog, we find that the average navigable period is two hundred days a year. We have therefore fixed a minimum period of one hundred and fifty days annually. We thought, moreover, that though it would be desirable to give the whole world facilities for making use of all rivers fulfilling certain conditions, it was also important that an undue servitude should not be thrust upon riparian States. For this reason the Italian Delegation proposes that watercourses upon which navigation is only possible by haulage should not be subjected to the regime of internationalisation. In this connection I associate myself with what has been said by M. Montarroyos. We must take care not to impose conditions which the riparian States are not in a position to accept. Many riparian States are prepared to afford freedom of navigation, but we cannot claim that they must abandon their administrative rights. Here I return to an idea which I developed when speaking of hydro-electric stations. Disputes might arise between neighbouring countries with regard to the utilisation of a tributary, because if the water of this tributary is used, for instance, for irrigation, the volume of water in the river flowing to the sea is diminished, and as a consequence the navigability of the river is decreased. In the same way large reservoirs might be made for hydro-electric stations, and the volume of water in the lower reaches of the river would thus be affected. In our opinion, therefore, it is absolutely essential to distinguish between the administration which must be left to riparian States and the freedom of navigation which is to be granted to vessels of the whole world. I would point out that as a general rule the various interests coincide; if it is greatly to the interest of one country to obtain access to the sea, it is greatly to the interest of another to allow it to pass through its territory, since the result will be a great development of traffic and industry. Interests coincide much more often than might be thought. It is these very difficult and technical considerations which have prompted us to lay before you the amendment to which I have thus drawn your attention. I felt that bound to give this explanation, and I am quite ready to give any others which may be required. I sincerely hope that this discussion will lead to a solution which will really be in the interests of all, and which will make possible throughout the world the development of river transport, which is already of capital importance and which is becoming increasingly important.

Sir Louis KERSHAW (India). — I will only detain the Committee one moment to explain the amendment moved by the Indian Delegation (1). I am entirely in favour of the method of proceeding by definition rather than by enumeration, but I think it would be a mistake to push this principle of uniformity too far,—to attempt to fit

(1) See p. 69.

into the procrustean bed of Article 1 every river in the world which satisfies certain conditions, no matter what the local conditions may be. There must be exceptions, as a study of the map will make clear. There are a number of unusual cases in the world, which must be provided for, and it was to meet one class of these that the Indian amendment was proposed. Our particular difficulty is caused by the existence of the French and Portuguese settlements in India. Those members of the Committee who were present at the discussion on transit are familiar with the facts. I could give several instances, but I think the best which I can mention here is the River Hooghly. On that river is situated the great port of Calcutta, one of the great ports of the world; I think about three millions of shipping go in and out of Calcutta every year. About 15 miles north of Calcutta is the small French settlement of Chandernagore. Under the definition as it now stands in the *Green Book*, the River Hooghly would be an international river. I feel quite sure that the Commission which was responsible for this definition could not have had in mind a case of this kind, or that they intended to include it in their definition; I feel the Committee will agree that it is not unreasonable for my Government to say that they would find considerable difficulty in adhering to any Convention which had the effect of making a river like the Hooghly international. This does not imply that there is to be any restriction on freedom of navigation, because on the Hooghly there is complete freedom of navigation; but to have complete freedom of navigation is a very different matter from accepting the obligations, imposed by this Convention, which would result from the internationalisation of a river of this kind.

M. VALLOTTON (Switzerland; speaking in French). — I will not detain you long with the question introduced by the Delegate for India, which in my opinion ought to be discussed later on.

I do not think it would be true to say that the Paris Commission was not aware of cases of this kind. As a matter of fact the Portuguese Delegate, amongst others, referred to this question, but I do not think that it calls for special treatment.

I now come to another much more important question. We have listened to a series of speakers who have given their reasons for various amendments. I made a proposal, which will no doubt meet with the approval of the Committee later on, to the effect that amendments which are absolutely opposed to each other should not be discussed simultaneously. The Japanese amendment is clearly intended to enlarge the scope of the definition proposed by the Provisional Commission of Enquiry. On the other hand, all the other amendments—British, Italian, and Portuguese, as well as the Hungarian amendment, which includes them all—aim at restricting the scope of the definition. In the first place, it would be most desirable to come to a decision as to whether we intend to go farther than the *Green Book* or not so far, and I do not think that we can continue to discuss simultaneously amendments which are of an essentially different nature.

M. Bignami, with the clear-sightedness of an expert accustomed to handle far-reaching problems, has laid before you views to which we can all subscribe. It is most desirable that the present Convention should result in the general encouragement of major navigation for the benefit of all mankind, and we all endorse his words. We are particularly glad to have heard M. Bignami speak of the technical measures taken by Italy with a view to the creation of a navigation system adapted to six-hundred-ton barges. Switzerland, in particular, is strongly in favour of this scheme. I have a few criticisms to make with regard to the amendments proposed to-day by the various delegations to which I have referred, but this is because these amendments appear to me to take no account of a question which is of vital importance to us all. I would here venture to point out that, though the views of experts must be given a hearing, it is also advisable sometimes to hear the opinions of the unhappy and much-maligned jurists. Sometimes they have to point out to the experts, who are inclined only to look to the future, the necessity of respecting the past. If our labours are to be in accordance with the dictates of wisdom, we must bear in mind not merely requirements, but also legal rights. I should therefore like to put to the meeting the following question, to which I am sure that I shall receive a unanimous reply: Will you or will you not respect acquired rights?

Free access to the sea, which is of vital importance to a nation, is particularly important for landlocked countries. I am now pleading the cause of States which are, of course, of small importance in comparison with the extensive interests represented by some of the delegates here, but which nevertheless constitute an element in the League of Nations which cannot be completely ignored. Landlocked countries enjoying the use of a waterway navigable as far as the sea can only ensure the maintenance and development of this right, which I regard as a natural right, by means of international convention. These conventions are essential to them; in the first place, they ensure the maintenance of the natural navigability of a waterway by means of works of upkeep which are generally provided for under the heading *regularisation*, and in the second place, these countries consider that some provision for possible improvements in the conditions of navigability of an international waterway, not only upon their own territory, but also upon the territories of the States which separate them from the sea, constitutes an essential guarantee of their interests. The British Delegation rightly insists on the fact that the present Draft Convention on the International Regime of Navigable Waterways would proffer no advantage to the States of Europe in particular, did it not offer a legal guarantee superior to that afforded by the regime set up by the Final Act of Vienna,—namely, those articles of the Treaty of June 9th, 1815, which relate to the legal regime applicable to international rivers, and which, moreover, were followed by further regulations, also drawn up in 1815, reproducing them almost word for word.

It is therefore important briefly to recall a few of the essential principles of 1815, which appear to have been forgotten by some speakers during the general debate on the present Draft Convention. The first of these principles is the following: It was manifestly the intention of the signatory Powers of the Final Act of 1815, which is still in force, that the legal regime established by them should be invested with the character of *provisions of major and permanent importance*. I repeat here the terms actually used in particular in the famous instructions given by the French Government to its Representative at the Congress. According to the method of procedure adopted in 1815, there was no question of a Convention concluded by the whole body of States represented at the Congress, but rather of an Act, concluded by a few of the Great Powers, as applicable not only to themselves but also *all Christian States*, according to the conception of universality prevailing at that time. To-day we can say, in accordance with the spirit of the Covenant, that these provisions must be regarded as applicable to all civilised States without distinction as to religion. According to the spirit of the Treaty of 1815, these were applicable, not only to riparian but also to non-riparian States of international rivers. They were binding not only upon the signatories, but also upon States which were not signatories, or which did not formally accede to the articles relating to the general legal regime which was established—this is a very important point—not by negotiation between the States represented at Vienna, but, in the words of the Article, *by a decision of the comity of Great Powers*.

It seems to me that there may be deduced from the foregoing a number of principles which should be clearly stated and should serve as a basis for our discussions; they should constitute a minimum below which no State could pass without prejudice to the acquired rights of other States. In my view the first principle is that States which did not exist in 1815, but which have subsequently been detached from States subject to the provisions of the final Act of Vienna, are bound by the general obligations incurred by the State of which they formed part in 1815; in the same way they are entitled to claim the benefits which the Treaty of Vienna conferred upon their predecessors or founders. In the second place, since the settlement of 1815 is applicable to all States, the General Convention which we are about to adopt ought, in my opinion, also to apply to all civilised States, even to those which are not Members of the League of Nations or which are not admitted to its technical organisations. In the third place, acquired rights which have been acquired in virtue of the Act of 1815 cannot be restricted except by the unanimous consent of all civilised States. Great importance should be attached to this, because the Treaty of Vienna was confined to the affirmation of principles which corresponded to the legal conceptions prevailing throughout the world at that time, and which had been consecrated by the long-established and universal practice of the most civilised countries. Without desiring

to detract from the merit of the States which codified these principles—amongst others for example, in the French Declaration of 1792—I would venture to recall the fact that the work of the Congress of Vienna was not a conception evolved entirely from the minds of the Members of the Congress; as with our task, it was a codification of long-established custom which was already observed by the States. This fact above all should ensure respect for such established custom.

This leads me to express my surprise and regret at certain amendments formulated to-day which appear to me to constitute a direct violation of these acquired rights.

In the first place, I will speak of the Portuguese Delegation's amendment (1), which aims at restricting internationalisation—I do not know why—to waterways with a navigable depth of three feet. I do not know whether Portuguese feet are large or small;—I imagine they are very small in view of the elegance of that nation, and I do not know on what the Portuguese Delegate bases this definition. With regard to the Hungarian amendment, which includes the British and Italian limitations, not to mention a number of others—a whole page of them—this amendment appears to me to have the disadvantage of being absolutely opposed to the existing regime, especially having regard to the navigation acts of the various European rivers. I am not referring only to the regime of 1815. The Italian Delegation, for example, proposes to exclude from the international regime any waterway navigable from the sea, not only if it cannot be, but also if it actually is not, used for navigation for a period of at least 150 days annually. It must also take vessels of at least 200 tons whilst, further, the Italian Delegation does not admit that a waterway with a towing path can be of international concern.

Again the British Delegation, does not admit the international character of a waterway which at the present time is not open to ordinary commercial navigation (2). In spite of the reactionary reputation which they bear, the diplomats who drafted Article 108 and the following articles of the Final Act of 1815 appear to me—I regret to tell our esteemed colleagues—to be in reality far more liberal than the Europeans of the twentieth century. I need merely point out that ordinary commercial navigation, as the phrase is understood by some to-day (we have heard the statement of M. Bignami), did not exist in 1815. For example, commercial navigation presupposes that such navigation is carried on by the upstream State, that ports equipped *ad hoc* have been created, and other installations provided, without which ordinary commercial navigation cannot exist. Moreover, in 1815 and until the middle of the century, it was rarely possible to make use of barges of 200 tons with a draught of 3 feet for 150 days of the year on the rivers defined in 1815 as international,—the Rhine, the Danube, the Po and the Ticino. Until the middle of the 19th century any method of traction other than haulage was almost unknown.

These amendments would introduce into the future definition of international rivers a new principle which would conflict with the obligation to keep in a state of repair the bed of the river and the haulage routes formally included in the Treaty of Vienna in 1815, and in subsequent Treaties. The result of neglect on the part of the downstream State, to keep up the channel or haulage route of a navigable waterway as far as the frontier of the upstream State, would be that, through the fault of the former and to the detriment of the latter, not only would ordinary commercial navigation, which is claimed as a minimum by the British Delegation, disappear, but the navigability of the river would also be reduced below the minimum claimed by the Portuguese and Italian Delegations. I will explain. Everyone knows that, even on a first-class waterway, the result of not dredging a sandbank situated at a certain point may be that navigation is rendered impossible even for barges under 150 tons. This has been experienced recently on a European waterway of primary importance. If a downstream State allowed a port indispensable to navigation to fall into disrepair or failed to throw it open, the limitative clauses suggested by the Hungarian, British and Italian Delegates would at once come into play. The chief superiority of the

(1) The text of the Portuguese amendment reads as follows :

"After the words *naturally accessible* in the first line of Article 1, paragraph 1, insert the words *for vessels drawing at least three feet of water.*"

(2) The text of the British amendment reads as follows :

"Article 1, paragraph 1, line 1. In the English text, after *sea* add *for ordinary commercial navigation*; in the French text, after the words *depuis la mer* add the words *à la navigation commerciale ordinaire.*"

principles adopted in 1815, as also of the definition proposed by the Commission of Enquiry at Paris, over the provisions now suggested to us—which I will venture to describe as measures of *petty strangulation*—is that internationalisation is not made dependent upon the will of a riparian State, but upon the indisputable natural characteristics of the waterway,—in other words, upon that degree of navigability as far as the sea which it would possess provided that—here I quote the wording of 1815, which is, I think, much better than that proposed—the works necessary to *remove any obstacle to navigation* are carried out.

The Treaty of 1815 is not all. Switzerland, for example, and other States also, is so situated that, according to the Treaty of Peace, should any of the provisions of the Rhine Convention conflict with any of those of the General Convention, the latter would prevail. What would be the position if these amendments were adopted? At the present time we have the Rhine Act, which is of a fairly liberal nature, though it is by no means up-to-date, but the spirit of this treaty is diametrically opposed to all these amendments. There is one article which is well known to a great many of us,—Article 23 of the Act of 1868. It reads as follows :

Articles 15 and 22 (of the Act of 1868) shall not be applicable to vessels of a capacity of less than 300 quintals or to their masters.

I have asked experts here present what 300 quintals of that date amounted to. They tell me that it was equal to 15 tons.

It follows therefore that, contrary to what has been suggested to-day, it was stipulated at that time that vessels of a capacity of 15 tons or less were not to be subjected to the conditions of Articles 15 and 22.

Article 15 lays down that :

The right of navigating sailing or steam vessels upon the Rhine from Basle to the open sea shall only be granted to persons who can prove that they have received from the Government of the riparian State an order permitting them to navigate, etc...

Article 22 is as follows :

Before a vessel may undertake its first voyage upon the Rhine, the owner or master shall provide himself with a certificate proving that his vessel possesses the solidity and rigging necessary for navigation upon that part of the river for which it is intended. This certificate or order shall be delivered.

I will spare you further extracts. I merely wish to point out that it appears from these quotations that in European law to-day, amongst other articles, there is one the abolition of which by the General Convention which it is desired to enforce will be unanimously opposed by the riparian States of the Rhine. Contrary to what has been proposed to-day, this article lays down that not only will we accord to minor navigation the same privileges which we accord to major navigation, but we will actually adopt a more liberal policy towards the former than towards the latter, since we exempt it from the preliminary formalities required from major navigation. Such is the spirit of 1815, and I think it is the right spirit. I think that the main fact to be deduced from these quotations is that, unless we wish to produce a convention which cannot be accepted by a large number of those present, we shall at all events be compelled unanimously to adopt, as a minimum, respect for existing rights, and more especially respect for the principles which I have quoted, and which are in complete opposition to the amendments proposed to-day.

These considerations lead me to ask for the rejection of these amendments, and also to move that the Conference shall consider whether the definition contained in the *Green Book* shall be extended.

The position of European States referred to in the Treaty of Peace appears to me to be the following : Unless this General Convention represents for them an advance upon existing navigation acts and acquired rights, it will be impossible for them to sign it.

M. TSANG-OU (China; speaking in French).—After M. Vallotton's long speech there seems no need for me to speak. I will, however, claim your attention for a few

minutes. I cannot be silent; I much regret that I shall be forced to speak in opposition to the views expounded by the Swiss Delegate. I will therefore read the amendments submitted by the Chinese Delegation :

The Chinese Delegation sees no objection to accepting the definition as laid down in Article 1, paragraph 1, should the Conference decide that internationalisation has been granted in order to afford access to the sea to a landlocked State...

On that point I think I agree with M. Vallotton.

... In this case, it proposes that the words *accessible to the sea* be substituted for the words *accessible from the sea*, and that the High Contracting Parties shall consist only of the riparian States, without the possibility of assimilating the non-riparian States with the riparian.

If, on the other hand, the Conference were to decide that the system of internationalisation should give freedom of navigation to non-riparian States, the Chinese Delegation is of opinion that it would be necessary to fix a certain limit to the tonnage transported, in order that the navigation of non-riparian States should not injure local navigation, or else that a decision should be arrived at that the transport of imports and exports shall be direct, without transshipment and without obstructing the establishment of public towage services and other forms of monopolised haulage. Both these cases apply to international rivers of limited concern, that is to say to those of which the High Contracting Parties are riparian States, who will frame their agreements in accordance with the principles of the present Convention (particularly 5, 6, 7, 8, 19, 20, etc.).

With regard to international rivers of general concern, the Chinese Delegation proposes to indicate them in a table attached to the present Convention, the provisions of which apply wholly to them.

Should the Conference decide that the definition of internationalisation shall apply to international rivers, without any distinction between general and limited concern, the delegation will later propose certain amendments.

With your permission I will now proceed to give you some explanation. As you know, the Chinese Delegation took part in the work of the Commission at Paris. I do not think, therefore, that we are in a position to criticise the *Green Book*. There is, however, one point on which we are not very clear. We were invited to take part in this Conference by a letter from the League of Nations, dated September 20th. To this letter was attached the Resolution adopted by the Assembly at Geneva. We are invited to :

(1) Draw up, under conditions laid down in the Resolution of the Council of to-day's date, the measures which may be taken by the Members of the League in fulfilment of that part of Article 23 (e) of the Covenant which concerns freedom of communications and transit, as well as the General Conventions on the international regime of transit, of ports, of waterways and of railways referred to in Articles 338 and 379 of the Treaty of Versailles.

2) Determine, under the same conditions, whether the measures which it elaborates should take the form of Draft Conventions to be ratified by the Members of the League or of *recommendations* to the various Governments, or of Draft Resolutions to be adopted by the Assembly.

There is one small point upon which the Chinese Delegation wishes for an explanation. According to the first and second paragraphs it would appear that there were to be two Conventions,—one in pursuance of Article 23 (e) and another in pursuance of Article 338.

There is no jurist in the Chinese Delegation. I would therefore ask whether the Convention to be concluded between the Members of the League of Nations in virtue of Article 23 (e) of the Covenant is to be the same from the point of view of the advantages to be accorded as the Convention to be concluded by the Members of the League of Nations in virtue of Article 338. Moreover, the Chinese Delegation proposes that a list of rivers of general international concern should be enumerated, because it contemplates the inclusion of all rivers which have become international in virtue either of special acts or of the Treaty of Versailles, or of a subsequent agreement. It wishes to replace the second paragraph of the definition of Article 1 by an enumeration. If there are really to be two Conventions, the Chinese Delegation is prepared to accept paragraph 1 of Article 1 with certain minor alterations, so that where it takes the form of a recommendation or of a draft convention, the advantages derived from this convention will be limited to riparian States. But if it is understood that there is to be

only one Convention, the Chinese Delegation will only accept Article 1, paragraph 1, after more radical alteration. This is the meaning of our proposal. The delegation on behalf of which I speak would be glad to have an explanation regarding the spirit of this Resolution.

The CHAIRMAN (speaking in French).—I think that the Secretary-General of the Conference, who was present at the First Assembly of the League of Nations at Geneva, will be able to give you some definite explanation.

M. TSANG-OU (China; speaking in French).—As I was not present at the discussions which took place at Geneva, and as I am in no way a jurist, I venture to ask for information with regard to what took place during the first Assembly of the League of Nations.

M. HAAS (Secretary-General of the Conference; speaking in French).—I am no more a jurist than M. Tsang-Ou, and the only advantage I have over him is that I was present not only at the discussions held at Paris upon this subject, but also at those held at Geneva.

In the first place I would point out to M. Tsang-Ou that his excellent memory has somewhat failed him on this occasion. The text of the Resolution which appears to astonish him is exactly the same as that of the Draft Resolution prepared by the Commission of Enquiry at Paris, of which M. Tsang-Ou was a member, and which was submitted to the Council, accepted by the Council, submitted by the Council to the Assembly, accepted by the Assembly, and finally completed its journey by being once more laid before M. Tsang-Ou in his capacity as Representative of the Chinese Government at Barcelona.

With regard to the subtle complicated problem propounded by M. Tsang-Ou, its solution is quite easy. It never occurred to anybody to make, on the same subject, two conventions having the same scope of application, one based on Articles 338 and 379 of the Treaty of Versailles and the other drawn up by the same persons in pursuance of Article 23 (e) of the Covenant. What attitude could have been adopted by the League of Nations? The League was confronted with two different texts, referring to the same subject, but coming from different sources. On the one hand there were texts of the Treaty of Peace, Article 338, dealing with the Convention upon Navigable Waterways, and Article 379 dealing with Conventions upon Transit, Navigable Waterways, Ports, etc.; on the other hand there was Article 23 of the Covenant, which did not actually specify these conventions, but referred to freedom of communications and transit, and to the measures to be taken in order to ensure and maintain this freedom. The League of Nations was faced from the outset with the necessity of accomplishing these different tasks. To this end, on the proposal of the Council, it convened this Conference.

With regard to Articles 338 and 379, definite reference could be made to conventions, as definite provision had been made for them. With regard to Article 23 of the Covenant, the scope of which is much wider, it was possible to take the view that conventions would have to be drawn up for certain questions, whereas recommendations only were suitable for others. Indeed, the Commission of Enquiry at Paris anticipated that, in regard to ports, no definite conclusion would be arrived at, but that a draft resolution was all that could be expected. This is why there are two different texts,—one much more definite, dealing with Articles 338 and 379 of the Treaty of Versailles; and the other, much wider in scope and allowing more latitude, bearing upon Article 23 of the Covenant. So far as I know, however, it has never occurred to anyone that two different texts should be drawn up, one in pursuance of Articles 338 and 379 and the other in pursuance of Article 23 of the Covenant. As the sources from which authority was derived were different, we were obliged to make two paragraphs, one detailed and precise and the other in more general terms; but the idea in each was the same.

M. TSANG-OU (China; speaking in French).—I am very grateful to the Secretary-General for his explanation. It does not, however, prevent me from feeling some hesitation when I read the two paragraphs.

The text of the second paragraph is as follows : *To determine under the same conditions whether the measures...—there the word measures is used—...should take the form of Draft Conventions to be ratified by Members of the League or of recommendations to the various Governments...*

In the other paragraph, on the other hand, the word *conventions* is used. Thus on one occasion the word *measures*, on the other occasion the word *conventions*, is used. My French is not perfect, and I am therefore not quite sure what is meant; that is why I am asking for an explanation.

In submitting my amendments I am compelled to have due regard to the definition. I am glad to learn that there is to be one convention only, and I am convinced that the wording is correct, but that I have not fully understood it.

M. ALVAREZ (Chile; speaking in French). — I should like to substantiate the explanation given by the Secretary-General by pointing out that the Committee of Jurists, which was called upon to investigate this question, unanimously agreed that one convention, and one only, was intended. The Convention which the Barcelona Conference is to draw up is that referred to in the articles of the Treaty of Versailles.

I will now briefly summarise the main points of the discussions which have taken place during the last few days in this Committee upon Navigable Waterways. The cleavage which has appeared is one rather of form than of principle. Discussion is concentrated upon the meaning of certain words rather than upon the principle of the question at issue. Misunderstanding arises from the meaning to be attached to the expression *international river*. In the minds of a certain number of delegates this expression is equivalent to *internationalised river*, in other words, a river over which the riparian States possess no rights, and the conditions upon which may therefore be compared with the high seas, since everyone has the right to navigate freely upon it. Other delegations, amongst them that of Chile, prefer the definition of such rivers laid down by international law—that is to say rivers which cross or separate the territory of several States—unaccompanied by any conditions with regard to the characteristics of such rivers—in other words, the rights which riparian States may exercise over them.

Our discussions would progress more rapidly if, instead of arguing on the expressions *international river* and *internationalised river*, we went to the root of the matter. It would be better to endeavour to ascertain what rights riparian States possess upon the rivers which cross or separate their territories, and what rights non-riparian States have in respect to the same rivers. When we have decided whether the rights of riparian and those of non-riparian States should be identical and equal in regard to navigation, we should proceed to make distinctions between certain classes of rivers. As I have already had occasion to remark, rivers could be divided into two or three categories. When this question has been discussed, the considerable differences of opinion which are now apparent will disappear, and it will be much easier to come to an agreement.

ADMIRAL PRICA (Serb-Croat-Slovene State; speaking in French). — I was rather surprised to find that the debate on Article 1 of this Convention began with the discussion concerning the tributaries of international waterways. I wondered whether a greater degree of importance was attached to such tributaries than to national rivers flowing directly into the sea. Is our river, the Morava, with its 10 kilometres of navigable length, more important from the point of view of world-navigation and trade, than such rivers as the Mississippi, the Nile, the Yang-Tse-Kiang and the Seine? I think it would be much better to follow the natural order and to have considered first of all national rivers flowing into the sea, than national tributaries flowing into international rivers. But I must defend the principles set forth in Article 1 of the Convention, including paragraph b).

I will be brief. A national waterway is an absolute necessity for a riparian State which has no other means of affording protection to and developing its own shipping in the midst of world competition. It is precisely a State of this kind which will be exposed on international rivers to unlimited competition, and its only means of preserving its autonomy and independence will be through national tributaries of the

principal river. M. Georges Kaeckenbeeck, a Member of the Legal Section of the League of Nations, has been good enough to present me with a pamphlet entitled *International Rivers*. I have read part of it, and I will venture to read you the first paragraph of the introduction, which is as follows :

A navigable river, which lies wholly in the territory of one State, is described as national. Such a river forms part of the territory and is, according to general opinion and practice, subject to the exclusive control of the territorial Power.

I hope that this definition will also be applied to national tributaries of international rivers. I do not think I have anything else to add. I would merely repeat that, in this matter, I am defending the text of the Draft Convention, and that I shall be very glad if it is preserved intact.

M. SEELIGER (Germany; speaking in French). — You will admit that for those who did not take part in drawing up the Draft Convention contained in the *Green Book*, it is at times difficult to understand the meaning of words, and to follow discussions based entirely upon this text. However, the discussion which has taken place yesterday and to-day has thrown a good deal of light upon the bearing of that part of Article 1 which we are now discussing. In my view two points have been clearly established :

1. As General Mance has pointed out, we must distinguish between the regime which is to be applied to a certain number of rivers and the administration of these rivers. By regime we must understand the whole body of principles which are to govern navigation, whereas administration covers all measures necessary for the management of such rivers and everything connected therewith.

2. The word *international* applies to a river placed under a strong international administration, withdrawn from the authority of riparian States and handed over entirely to an international commission. This term applies to a river to which it is desired to apply all the rules laid down in the articles of the Convention. Rivers are called international inasmuch as several States undertake to apply these rules to them.

In my opinion these two points, which have been established, are of the utmost importance. The essential point in my opinion is the definition contained in Article 1. I think that you will find therein the reason why M. Charguéraud is no longer satisfied with this definition. It is drawn up solely from the technical and legal aspects. After reading it and realising that all the rules which follow are to be applied to rivers coming within this definition, we wonder whether all rivers which satisfy the conditions of this technical and legal definition are actually to be subjected to the provisions which follow.

It appears to me that another aspect should have been considered,—the economic aspect. In defining the rivers to which it is desired to apply the regime in question we must not concern ourselves solely with the technical and legal characteristics; we must also take the economic features into account. I see that M. Vallotton is signifying his disagreement. Unfortunately I feel bound to take this view, and I think that it coincides with that of M. Charguéraud, who also queried the importance possessed by these rivers. If we wish to make a satisfaction definition, something must be added; we must make what I would call an economic definition. How is it to be done? That is the task of this Committee. I said yesterday that certain considerations must be borne in mind. The river must be of use to navigation in order to be of sufficient importance to induce such a large number of States to pledge themselves to renounce certain rights, and to undertake a number of obligations. I am in agreement with the Italian and British Delegations, for at bottom their amendments are governed by the same idea : it is essential that a river should be of use to navigation. How is this to be expressed? It is very easy to say that it must suffice for ordinary commercial navigation or for normal navigation. A formula remains to be found, and it is our business to find it. Such a river must be used extensively for navigation; because it is necessary to internationalise a river, there is no occasion for so many States to bind themselves by a solemn convention if the river in question only takes small craft. It is also quite possible to conceive the existence of great rivers upon which there is no navigation.

We must therefore add to the definition the idea that the river must be used more or less extensively for navigation. It is a far cry to the Congress of Vienna. Railways have been constructed, much progress has been effected in technical matters, especially in the utilisation of rivers for the production of hydraulic power. To-day it is an open question whether many rivers would not be of more use to man if they were employed for purposes other than navigation. Would you internationalise a river for the purposes of navigation, simply because it fits your definition, and in spite of the fact that it would be more useful to mankind if employed for the production of hydraulic power? It may be lost to navigation, but its hydraulic power will enable you to run electric railways upon which transport traffic may be carried on more cheaply than by water. This should be indicated in the definition. It is an economic detail; perhaps this assembly, which includes such an array of experts, will discover other points. The definition must be drawn up in such a way that rivers of the kind to which I have referred would not be internationalised, for freedom of navigation cannot be granted upon many rivers which are used for the purpose of producing hydraulic power. This should be specified. An economic element must therefore be included in the definition, if a satisfactory result is to be obtained. When this has been accomplished I think we can abandon the method of enumeration.

How are you to proceed? That is for you to decide. I think that this task of drafting might be entrusted to a sub-committee when the members of the Committee have given their opinions. The result would be more speedy than if we were to continue the discussion.

The CHAIRMAN (speaking in French). — We can either form a sub-committee or proceed at once to consider each paragraph of the article.

M. HAAS (Secretary-General of the Conference; speaking in French). — A sub-committee could meet to-morrow morning.

M. VALLOTTON (Switzerland; speaking in French). — In principle I am in favour of sub-committees, but there is one question which can only be dealt with by the Committee itself, and that is the question whether the principle of respect for acquired rights is to be recognised or not. This is a question of principle in regard to which a sub-committee cannot take a decision.

The CHAIRMAN (speaking in French).— Subject to the approval of the Committee, would you agree to the examination of this question by a sub-committee?

M. VALLOTTON (Switzerland; speaking in French). — I am afraid that it is a case of *non possumus*, for certain delegations at any rate.

M. HOSTIE (speaking in French). — I should like to point out to the Swiss Delegate that our Convention contains an article—which he knows, since he helped to draw it up—dealing with acquired rights (1). All questions of this nature should be discussed in connection with that article.

M. VALLOTTON (Switzerland; speaking in French). — The argument of my distinguished colleague, M. Hostie, does not appear to me conclusive. It only deals with part of the question. The article to which he refers is drawn up in such a way—I am neither approving nor criticising it, I am merely stating a fact—that the text which we should adopt here would *ipso facto* take its place, and that I cannot admit.

The CHAIRMAN (speaking in French). — You desire the Committee to come to a decision upon the question of principle which you have raised, namely, whether acquired rights are to be respected.

(1) Article 17.

M. VALLOTTON (Switzerland; speaking in French). — In my opinion that is essential. No compromise is possible in this matter. No half measures are possible. If some delegations agree that rights must be left untouched as they stand, their wishes must be borne in mind. If the majority of this Committee decides that acquired rights need not be respected, each member will be free to act as he thinks fit.

M. BIGNAMI (Italy; speaking in French). — What is the meaning of these words *acquired rights*? M. Vallotton spoke of the Treaty of Vienna and of the Po and of the Ticino. I do not think that any mention is made of the Ticino in the Treaty of Vienna. With regard to the Po, M. Vallotton referred to it in an article written by him in 1913, in which he said : *The Congress of Vienna succeeded in working out a series of international regulations for the Rhine and its tributaries... A similar arrangement was also contemplated for the Po..., but there is no longer any question of such an arrangement for the Po, and, to be brief, the Rhine is the only Swiss river which is open to navigation.*

I should like to know what is meant by *acquired rights*. As I have already pointed out, the Treaty of Vienna was concluded a century ago, when conditions were quite different. I shall speak only of Italy. Is it fair to refer to the Treaty of Vienna? At that time, in the northern part of Italy the Po separated Lombardy and Venetia, which then belonged to Austria, from the territory subject to the Holy See,—the Duchies of Modena, Parma and Piacenza, and crossed Piedmont; the basin of the Po separated Piedmont from Lombardy.

In virtue of these same acquired rights, therefore, Italy,—whose son I am proud to be, as each one of us here to-day is proud to belong to his own country,—Italy, which has struggled for a century to gain her liberty and independence, would have to recognise a treaty, concluded a century ago, when we were still divided and under a foreign yoke; and that we neither can nor ought to accept. It is contrary to the very principles of humanity, for there is one duty which comes before all else, and that is the duty of each one of us to defend the dignity of his own country. We cannot accept this principle of acquired rights. We are prepared to discuss the future,—we will devote due consideration to technical and legal points, but only in the light of conditions prevailing in the world to-day.

M. VALLOTTON (Switzerland; speaking in French). — There is no question of the Po or of the Ticino; it is a general question of principle. M. Bignami may set his mind at rest. The Italian and Swiss Governments will readily come to an understanding, but the question of principle far exceeds the relative importance of our local interests. The question is, whether we draw up a convention based on respect for existing rights, or not. I think that we must face this question. If M. Bignami's view is correct, he will have all the guarantees that he requires, since he assures us that there is not sufficient ground for internationalisation; if his view is adopted, he will obtain all that he desires.

The CHAIRMAN (speaking in French). — The situation is now quite clear, and I will ask all Members of the Committee to make up their minds. Will those raise their hands who wish, after having heard the French Delegation, to enter upon a detailed examination of Article 1, whilst dealing at the same time with the question of acquired rights?

M. VALLOTTON (Switzerland; speaking in French). — What I opposed was merely the submission of this question to a sub-committee. This was the only point on which there was a difference of opinion amongst us.

M. MULLER (Czecho-Slovakia; speaking in French). — I support M. Vallotton's proposal; we are in a similar position.

The CHAIRMAN (speaking in French). — The Committee is in favour of proceeding to-morrow to consider Article 1, after hearing the views of the French Delegate (1).

The meeting adjourned at 7.55 p.m.

(1) The amendment of the French Delegation reads as follows :

"In applying the present Convention, the following are declared to be waterways of international concern :

"1. Waterways or parts of waterways, natural or artificial, included in the list attached as an Annex to the present Convention, as well as those which may subsequently be added either in virtue of unilateral declarations on the part of States under whose sovereignty or authority these waterways or parts of waterways are situated, or of agreements concluded with the consent in particular of these States.

"These waterways shall be deemed to be of general (international) concern;

"2. Rivers which, in that part of their course which is naturally navigable, divide or cross different States. These waterways shall be deemed to be of common (international) concern."

Further the French Delegation proposes a new Article 1 (a), the text of which is as follows :

"Waterways of general concern shall be subjected to the terms of the present Convention, of which all the signatory States may avail themselves; further, if necessary, in virtue of special agreements or treaties, these waterways shall be subjected to the provisions of a navigation act, valid only between the States which concluded such act.

"In no case may the provisions of such navigation act be considered by any of the States which are not parties to it to be at variance with those of the present Convention.

"The riparian States of a waterway of common concern undertake to regulate by common agreement all matters connected with the use of such a waterway.

"Any arrangements which they may conclude for this purpose shall, as far as possible, be in conformity with the principles set forth in the present Convention.

"States other than those which have concluded such arrangements may, however, only avail themselves thereof in so far as the latter States may have decided."

FIFTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Friday, April 1st, 1921, at 3.30 p.m.)

DISCUSSION OF ARTICLE 1 (CONTD.) — DISCUSSION OF ARTICLE 2 — DISCUSSION OF ARTICLE 3
— POSTPONEMENT OF DISCUSSION OF ARTICLE 4 — DISCUSSION OF ARTICLE 5 — DISCUSSION
OF ARTICLE 6.

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 1 (Contd.)

The CHAIRMAN (speaking in French).—I wish to introduce M. Detœuf, Chief Engineer of French Bridges and Roads; he will replace M. Charguéraud, whose absence we all so much regret. The Committee will have great pleasure in listening to his remarks on Article 1 on the subject of the system of definition and that of enumeration. I call upon him to speak.

M. DETŒUF (France; speaking in French).—I should like first of all to thank the Committee most warmly for the sentiments of sympathy and esteem which it has manifested towards my chief, M. Charguéraud, whom it is specially qualified to appreciate. I hope that before long M. Charguéraud will be able to resume his work in the international commissions.

I find a certain difficulty to-day in making an exact statement of the views which M. Charguéraud outlined at the last plenary meeting. I have only just arrived, and have hardly been able to see him. I would request a short respite in order to get some idea both of the texts which have been handed to me and of the general opinion with regard to the subject. It would appear, however, that there has been a certain amount of misunderstanding respecting some of the views expressed by M. Charguéraud. I have not gathered, either from the conversations which I have had with him or from the perusal of the texts, that he expressed the view that a list should be established of the rivers coming under the terms of our Convention. His statement may be divided into two parts. He deals first with the rivers which he characterises as of *general concern*, which are, as a rule, those on which non-riparian States are represented; and then with international rivers which he characterises as of *common concern*, and with regard to which he is of opinion that the riparians alone should carry on negotiations between themselves. For international rivers of general concern, on which all the non-riparians have rights, an exhaustive list may be established simply by means of an examination of the Treaties of Peace; a list of rivers of common concern cannot, on the other hand, be obtained by means of a simple enumeration,—it must be drawn up on the basis of a definition and of previously determined rules. The difference between these two classes of rivers to which the Convention would apply is, then, that, for the former, non-riparian States would possess certain rights over them, whilst for the latter, riparian States alone would have a kind of common contract established on the basis of our Convention, any rights which might be stipulated for non-riparians, such as, for instance, freedom of navigation, being exercised on occasion through the medium of one of the riparian States. That is, in outline, what I have gathered from the texts and from conversations I have had. I must apologise for not being more definite and for not

laying a scheme before you to-day; I shall require a few more hours of reflection before proceeding further with the statement which I have to make.

M. PIERRARD (Belgium; speaking in French).—If the Belgian Delegation has not hitherto taken any share in the discussion, it is because it has not proposed any amendment to Article 1 of the *Green Book*; it had therefore none to defend, and has been content to listen very attentively and with the greatest interest to the learned discourses—learned from both the legal and technical points of view—which have been made before this assembly. After such erudite digressions, I have some hesitation in speaking myself, for what I have to say is of an infinitely more simple—perhaps more banal—character. However, my hesitation will not last long, for my speech will be a short one.

In listening to the debates which have taken place during the last three days, I have seemed in a way to live over again those which took place in the Plenary Transit Committee. There has been much talk of freedom and equality, and these qualities have been much begarlanded; but beneath the garlands I can divine on the part of many of the delegations anxieties which bear only too national a character. I also could make allusions to freedom and equality, but I will refrain. In my country the children sing a ditty at school: “Freedom to conquer the world need not trouble to call here.” If I speak, it is rather with a selfish aim. I have heard it said that, side by side with the obligations imposed on the riparians of rivers which are treated as international, no corresponding privileges and rights are accorded to these riparians in respect of the foreigners who will use their waterways. But I say that such privileges *are* accorded, and that is why I am speaking now. We in Belgium, where the greatest freedom exists on waterways, are desirous, when we visit other countries, of being met with similar privileges. Thus you see that the sacrifices which each one makes at home are countered by privileges abroad. In the end, therefore, it is egoism which is prompting my words.

It is on the basis of these views that the Belgian Delegation is opposed to the system of enumeration. It supports the view that the rivers which will be subjected to the regime now under discussion should be established by means of a definition, such definition including, as it should, any example which may present itself, and eliminating precisely any too particular advantages which the different countries might hope to find in the system of enumeration. Obviously, there is no rule without an exception; it is even said that the exception proves the rule, but what we should like to avoid is for the exception to become the rule itself. That is the reason for which I myself consider it to be of great importance for the Conference to find a general definition which shall be all-embracing. The *Green Book* gave us satisfaction. M. Seeliger, the German Delegate, opened up a rather more extensive horizon when he suggested the introduction into this definition of economic considerations. No doubt there is something to be said for it, but I will say at once that what I fear is that it will be impossible to find the true definition in that direction. I do not see what criterion can be set up for the economic importance attaching to a river. It has already been said that certain small rivers or canals will be used by vessels with a carrying capacity of 100 or 200 tons, whilst larger streams may only be used by small craft hardly carrying any cargo at all. It is here, I think, that the difficulty will arise.

I was also struck by a remark of the Swiss Delegate on the subject of the maintenance of acquired rights. I am not a lawyer, and I appeal to those of our colleagues here who are professors or distinguished lawyers. I would ask them whether the *Green Book* Draft does not contain an article—Article 25—stating that the Convention may be denounced after a certain period,—ten years, I think. If this Convention were to make *tabula rasa* of all previous treaties and conventions, should we not, after a lapse of ten years, find ourselves face to face with a void? I am aware that my friend M. Hostie has told me that there is an article which provides for the maintenance of treaties stipulating greater facilities, but will this article come into play here? I would draw your attention to the following point. If it happened that for some reason or another our Convention disappeared through being denounced by the requisite number of States, what would become of the treaties the destruction of which we are contemplating to-day?

I will end on the *leit-motiv* on which I began. The Belgian Delegation will vote for the text which appears to it the widest and most liberal,—if the Japanese draft, which up till now seems to me the most liberal of those which have been submitted, were approved by the assembly, then the Belgian Delegation would vote for it. Failing this text, which will perhaps not obtain a sufficient majority, we shall vote for the one which appears to us the most liberal, reserving the right to refrain from voting altogether should the text submitted give us the impression of being the outcome of too narrow views.

M. VALENTINI (Italy; speaking in French).—May I add a few considerations to those already adduced here by previous speakers,—in particular by M. Bignami on behalf of the Italian Delegation,—in order to emphasise the necessity of completing the definition contained in Article 1 by means of some more exact definition of the qualities of those streams which have really the right to be regarded as international?

M. Seeliger reminded us very appropriately that to the economic and technical considerations which did not fail to inspire the *Green Book* Commission of Enquiry, should be added considerations of an economic nature; whilst he also rightly observed that since 1815, the date of the Treaty of Vienna, a number of important events have happened which must be taken into account. In addition to the historical and political events recalled by M. Bignami, events which in certain countries—for example Italy—have brought about a radical change in the situation by making null and void the contents of the Treaty of Vienna, he described the invention of railways as an economic factor which revolutionised the whole world. Thus, after the establishment of railways, inland navigation, which formerly had only ordinary routes with which to compete, fell into such a state of decay that there were many who thought it could never recover. But it has revived, and this on account of its most valuable features,—the minute proportion of motive power necessary for the haulage of steam-vessels, and the possibility of utilising craft of ever-increasing carrying capacity. From the beginning of the nineteenth century all the different countries exerted themselves to increase the size of their vessels with a view to transporting bulky, heavy and cumbersome merchandise, the very small intrinsic value of which necessitates reducing the cost of transport to a minimum.

The invention of railways was followed by the discovery of steam navigation, due to the genius of Robert Fulton, who in 1812—that is to say, at the very moment when the events leading up to the Treaty of Vienna were germinating,—succeeded in setting in motion the first steamship—the *Clermont*—on the Hudson, near New York. Further, the development of the metal and mechanical industries, which allowed of the substitution of metal for wood in vessels, and of metal for stonework in river works, rendered possible the construction of metal ships of dimensions hitherto unheard-of, the cargo of a single vessel becoming equivalent to that of one or several railway trains, not to mention the facilities which then became available for the utilisation of a factor of the greatest importance in the construction and upkeep of navigable waterways, namely, dredgers. Moreover, it was only the progress in mechanical construction which, as you are well aware, allowed of the canalisation of waterways; whilst the year 1834 saw the birth of those marvels of workmanship mechanical weirs—monuments to the genius of the experts of many countries, particularly of France.

From 1815 onwards, effort was concentrated in every country upon the possibility of enlarging increasingly the dimensions of vessels for inland navigation,—in particular their draught, (and, in consequence, their anchorages), which constitutes the capital factor in inland navigation. It must not be forgotten that the deeper the draught the smaller the motive power required,—a consideration of great importance to navigation in the ascent of a river from the sea, that is to say, navigation against the current; and it is this navigation which contributes in the greatest measure to the transport of sea-borne traffic to the interior of a continent. In fine, the last century witnessed universal rivalry in the enlargement of navigable waterways; where this was not possible, waterways were left deserted, and were finally abandoned or even abolished.

Italy was driven during the last century to fight for independence and union, and it is therefore only recently that she has been able to devote attention to her own waterways. M. Bignami has already told you how, before the Great War, a programme

had been laid down for the enlargement of Italian waterways, with the aid of the experience of other European countries, especially of France and Germany. Italy decided to enlarge her waterways to a degree which should render them accessible to vessels of 600 or even 1,000 tons on main waterways, and 300 tons on auxiliary waterways; for it was recognised that the waterways already existing were so restricted in size as to have lost all economic and commercial value. Notwithstanding the considerable difficulties of the moment, the work begun during the war and partially completed over the route Venice-Milan has now been resumed.

The conclusion to be drawn from the facts which I have had the honour to state before the Conference, is that in the definition of international waterways it is impossible to ignore the factor which speaks the loudest as to the economic value of any given waterway,—that is to say, the carrying capacity of the vessels,—in a word, *tonnage*. Tonnage may vary in different countries, but it can never fall to zero; that would be equivalent to admitting that the volume of traffic over the waterways to be internationalised may be so small that vessels navigate in ballast, thus reverting to their condition during the last century, before the coming of railways.

I venture to hope that the eminent specialists in the various branches of technical, economic and legal sciences who are here assembled, may be successful in coming to an agreement with regard to the determination of the minimum limit practicable in fixing the main factor, the economic value of a waterway to be defined as international, that is to say, the minimum practicable limit of carrying capacity for vessels.

M. VALLOTTON (Switzerland; speaking in French).—I should like simply to draw the attention of the assembly to the fact that the Swiss Delegation, which is as anxious as are, I think, all the others to bring our labours to a satisfactory conclusion, has endeavoured to find a formula which, whilst no doubt far from perfect, has as its object the amalgamation of some of the views expressed by the authors of the various amendments (1).

I should like in the first place to explain the reason which led us to substitute for the words in the *Green Book* definition, *naturally accessible from the sea*, the words *naturally navigable as far as the open sea*, in paragraph 1. The object of the change is two-fold; firstly, it appeared that the word *accessible* had perhaps not conveyed with sufficient clearness to certain delegations the fact that in a convention on navigable waterways it has the meaning of *navigable*. The idea in the *Green Book* had been to reassure those who were apprehensive lest international waterways flowing through new regions should be utilised for rafting or for navigation by means of boats suitable for carrying past portages, and so on. By this means, and by defining, as we do further on, what is intended by the word *navigability*, we aimed at not only allaying any misgivings felt by those who will sign this Convention, but also at avoiding later for our successors any argument on the subject of the words *accessible from the sea*. There is yet another ground for employing this expression, and this we endeavoured to demonstrate yesterday: that it is always well when creating a new work to endeavour

(1) The text of the Swiss amendment reads as follows:—

“The Swiss Delegation proposes, in the interests of conciliation, first, to substitute in paragraph 1 the words *navigable as far as the open sea* for the words *accessible from the sea*; and, secondly, to make it clear that only watercourses capable of being used for the transport of goods and persons should be regarded as being of international concern by definition.

“They therefore propose that paragraph 1 of Article 1 should be given the following form:

“1. All parts which are naturally navigable as far as the open sea, of a waterway which, in its course naturally navigable as far as the open sea, separates or crosses different States; and also all parts, naturally navigable as far as the open sea, of any waterway which connects with the sea a waterway included in the above definition.

“For the purpose of the above definition it is understood:

“(a) That in the absence of a provision to the contrary in the Act of Navigation, navigability depends on the extent to which it is possible to transport goods or persons over the channel when duly maintained;

“(b) That the possibility of transshipment... (and so on to the end of paragraph 1 as in the present text).”

2. In the second paragraph of Article 1, the Swiss Delegation proposes the following amendment:—

“In order to take count of the Netherlands proposal, and to avoid infringing existing Treaty rights by the present Convention, insert the following words at the beginning of this paragraph:—

“Waterways, the navigation of which has been declared free, either in virtue of the Final Act of Vienna of June 9th, 1815, or by some special Navigation Act... (the existing paragraph 2 to follow this sentence).”

to prove its intimate connection with earlier work; that, surely, is the spirit, too, of the League of Nations itself.

The wording *navigable as far as the sea*, or *navigable as far as the open sea*, is one which has a history, as you are aware. First employed in 1814 in the Treaty of Paris in the following form (1) : ...*navigation of the Rhine from the point where it becomes navigable unto the sea and vice versa...*, this formula gave rise to a celebrated controversy, which terminated in an agreement expressed in the exact wording of the Convention of 1831.

The Convention of Mannheim of 1868 (Rhine Navigation Act) substitutes for the words *as far as the sea* the words *as far as the open sea* (2), in order to indicate clearly that the maritime State at the mouth of a river could not by any possibility have the right of establishing a kind of impassable watertight barrier between river and sea navigation, but that, indeed, these two means of communication should in the very nature of things find a point of junction,—a point of mutual assistance, if I may use the term.

It is better to keep to texts possessing a history,—which have their *Präzedenzfälle*, as the Germans say,—and Article 1 of the Rhine Convention seems to me an excellent model in this respect. It speaks of navigation which attains the open sea, and then it adds : *it shall be free for the transport of goods and passengers*. This would appear to us to allay the misgivings of the Italian Delegation particularly, because it is evident that this navigation which claims rights, which claims freedom for the flag, can only be navigation for the transport of passengers and goods. It must exclude rafting, except where there exist navigation acts to the contrary—as in the case of the Rhine—which must be safeguarded, and it affords the detailed touches which have been called for by various amendments. I venture to say that the text appears to me infinitely superior to that proposed by the British Delegation, the conception of the degree of economic importance being, as M. Valentini stated clearly just now, of the most dangerous in a convention of this kind. Italy has shown that her system of navigable waterways has suffered neglect as a result of circumstances over which she had no control. Exactly; we recognise the fact; but it was the fault of other Governments. Before the union, the waterways system of Italy was completely neglected. On the Rhine, as M. Valentini observed just now, we have seen this happen : the regular steam-navigation service plying as far as Basle in the middle of the nineteenth century, a service which at that time was of considerable importance, disappeared as a result of the coming of railways. If there had been at the time a convention for the Rhine dealing with commercial traffic,—ordinary commercial navigation,—the riparians of the waterway which were concerned in the elimination of the international character of the Rhine would have pleaded, text in hand, that the Rhine was not an international river; and I do not think that I shall be teaching anything to our colleagues of the German Delegation when I recall the fact that, at the time when Switzerland demanded her former rights, at the beginning of the twentieth century, it was Germany who contended that it was a case of *Versuchsfahrten*, on the ground that by allowing our rights to lapse we had allowed them to suffer extinction. If at that time the Convention of the Rhine had contained the clause which the British Delegation proposes to insert, I admit that our legal position would not have been a favourable one.

I do trust that the Conference will not commit an error of this kind. That is the reason for which we have brought forward a text based on the experience of the Rhine Convention, whilst, in order to give satisfaction to the Italian Delegation,—which appeared apprehensive lest the other riparian of a waterway in which she is interested should claim privileges resulting from works going beyond the sphere of ordinary works of upkeep, which the riparian alone may be bound to carry out,—our intention is to define the conditions for navigation to which a State has a right,—that is, the navigability which results from the ordinary work of upkeep and not from works of improvement resulting in an increase of the natural capacity for output of the waterway. This is a point upon which I believe it will be well not to allow any doubt. The States here assembled must pledge themselves simply to this normal upkeep. No State should have the right, under colour of freedom for the flag, to

(1) Treaty of Paris of 1814, Article V.

(2) Convention of Mannheim (1868), Article 1.

enjoy the benefit, without untying its purse-strings, of costly works of improvement over and above such normal upkeep,—such regularisation, which, on the Rhine amongst others—and throughout the ages—has been considered as part of the ordinary work of upkeep.

These are the reasons which have led us to propose these amendments to Article 1, having in view the reconciliation of the different opinions expressed, as far as would appear just and fair. In paragraph 2 we have endeavoured to find a form of words which should satisfy the anxiety felt by the delegations of the Netherlands, of Belgium and of our own country—and I imagine of others as well—not to expose themselves to the risk of witnessing, as a result of new measures, as a result of the substitution of a convention for the former legal status, the disappearance of those rights in respect of international navigation which have already been acquired.

M. BIGNAMI (Italy; speaking in French).—I will not enter upon an examination of the amendments submitted by the Swiss Delegation, but I notice that M. Vallotton has not made any mention of the last part of his amendment, which speaks of *waterways, the navigation of which has been declared free, either in virtue of the Final Act of Vienna of June 9th, 1815, or by some special navigation act...* I must declare with all the power at my command that the Italian Government has sent a delegation here to collaborate in drawing up a convention which shall be of general utility, and that Italy does not feel it part of her duty to lend herself to the support of any injustice,—and an injustice it would be to revert once more to the Treaty of Vienna. I have to inform the Conference that Italy and her representatives will not sign a convention which is based in any respect upon the Treaty of Vienna. Even if we ourselves signed such a Convention, the Italian Government, the Italian Chamber, would not ratify it. In our opinion there does not exist at the present time any free people which could plead an instrument such as that of Vienna, which established the power of Austria-Hungary over Italy. Once again I repeat, Italy will not sign a convention which tends in any way to revert to the Act of Vienna. I desire that my statement may appear in the records of the meeting.

The CHAIRMAN (speaking in French).—Certainly.

M. SEELIGER (Germany; speaking in French).—I do not know whether I understood aright M. Vallotton's remarks on the subject of Germany's former policy with regard to Switzerland and the navigation of the Rhine, but I should like to make two observations. In the first place, navigation on the Rhine has never been impeded as regards Switzerland. As a proof of this, before the war the volume of traffic to Basle increased considerably, the tonnage attaining 15,000 tons in 1909 and 100,000 tons in 1913. The second point to which I should like to call attention is that Switzerland was not a signatory of the convention of Mannheim, and was therefore not a member of the Rhine Commission.

M. VALLOTTON (Switzerland; speaking in French).—Of course that is one version of the story.

M. WINIARSKI (Poland; speaking in French).—Acting upon the formal instructions which I have received from my Government, I hereby declare my approval of the observations of the Italian Delegate on the subject of the Treaty of Vienna.

M. POPESCO (Roumania; speaking in French).—I declare on behalf of the Roumanian Delegation that our country is in complete agreement with the view stated by the Italian Delegate; I ask that this statement should appear in the records of the meeting.

M. MULLER (Czecho-Slovakia; speaking in French).—I had not intended to speak, but, as the discussion is re-opened, I will submit a few observations.

In reading the Commission of Enquiry's Report on the Draft General Convention, it is noticeable that a discussion took place in Paris on the same lines on the subject of

Article 1,—that is to say, on the question as to which waterways should be considered international. At Paris a formula and a definition were at least agreed upon, and although M. Charguéraud is wishful to abandon it, I consider this definition to be a possible and acceptable solution of this difficult problem. I second the reasons which M. Vallotton has so ably set forth; I need not return to them.

As I had occasion to observe at the outset of the discussion, the question of choosing between a definition and an enumeration of international waterways is merely one of form, but the main question is, none the less, to agree on the international regime, and upon the features which a waterway must possess and the conditions which it must fulfil in order to be considered as of international concern. This amounts to a search for a criterion, and, if we succeed in finding one, we shall in so doing have actually set up the definition; the enumeration will then, as General Mance very justly observed, have become unnecessary.

What is it which determines the character and the international standing of a waterway? Not only the technical conditions of navigability, and the legal and political fact that the waterway forms the frontier of, or flows through, more than one State, but also the general geographical position, and the degree of culture and the density of the population in the territory passed through, as well as the stage of development reached by industry and agriculture, the conditions of other routes of communication,—in particular of the railways,—and the interest possessed by commerce in utilising any given waterway. It is precisely that which M. Seeliger noted at the last meeting; besides the technical and legal factors, the economic factor must be duly recognised. I am in complete agreement with M. Seeliger on this point,—I am only wondering how to express this economic factor in the definition to be made. M. Pierrard has already recognised this to be a task of extreme difficulty.

I would venture, further, to draw the attention of the Committee to the fact that any decisions taken hitherto with regard to international rivers of general concern, by means of international instruments, have been limited to Europe. The Congress of Vienna, the Congress of Berlin and the respective Treaties which issued from them, as also the Treaties of Peace, do not supply any ruling as regards the other rivers of the world. But here we are called upon to deal with all the rivers of the world. That is the difficulty. The Treaties of Peace recognised the international character of various European rivers, and laid down principles for the management of them. These provisions were conceived to a certain extent under the influence of the outcome of the war. We now find ourselves under the necessity of laying down an international regime for various rivers in other parts of the world, without injury to the interests of anyone. The difficulty is aggravated by the fact that certain States, such as the United States of North America, are not Members of the League of Nations.

I have said that I consider the system of definition as a possible and an acceptable one, and the last remark which I have made goes, in my opinion, to confirm this view. But the question whether the *Green Book* definition corresponds with the views of the large majority of the Members of the League of Nations is quite different. Although the various amendments submitted have brought to light differing points of view, I yet do not notice the differences in principle which have been mentioned here and qualified as irreconcilable.

The Czecho-Slovak Delegation would accept the text of Article 1 if it were amended on the lines of M. Charguéraud's proposal, and if it took into consideration the view expressed by the Swiss Delegate at the last meeting and again to-day. In order to arrive at a successful conclusion by finding a solution which will perhaps give satisfaction to all the members of the Committee, I propose that the points which have been raised should be referred to a sub-committee, with the task of submitting to the Committee a text which should take into consideration all the different views as far as possible.

M. SCASSI (Greece; speaking in French).—Certain delegations have manifested some anxiety with regard to the respect due to acquired rights. The principle which decrees respect for acquired rights is a universal one; it is therefore unnecessary to discuss it. The non-retrospective character of laws is another universally accepted principle. We are here to create and not to abolish. We ought to take into account our heritage

from the past, and, more than all, the rights already consecrated by use. This follows, incidentally, from the very terms of Article 23 of the Covenant, which has given us a mandate to assure freedom of communications and transit. We have not to create that freedom from the beginning; in great measure it already existed. That which is must be respected.

M. VALLOTTON (Switzerland; speaking in French).—It has been pointed out to me that I did not furnish any explanation with regard to the second part of my amendment, which deals with a question of particular interest to the Netherlands and other delegations,—that of the relation between the present Convention and previous rights. I have the honour to propose that the examination of this question be postponed until the time comes to deal with Article 17. I would ask M. Bignami and the authors of the other amendments to consent, in the common interest, to do that which the Swiss Delegation is prepared to do,—to withdraw their amendments, and also to vote for the retention of Article 1 in its *Green Book* form. I make this proposal conditionally.

M. ALVAREZ (Chile; speaking in French).—I reserve the right to speak more fully, when the time comes, on the question of acquired rights, of which passing mention has been made more than once, but I should like to say now that, in my opinion, international law does not admit any acquired rights.

M. SCASSI (Greece; speaking in French).—But then what is a convention, a treaty :

The CHAIRMAN (speaking in French).—We have studied most carefully the questions which were referred to us for examination. The Committee will join with me in noting that one important point has been achieved,—instead of using the words *international waterways*, as employed in the *Green Book*, the Committee unanimously prefers the use of the words *waterways of international concern*. That is an unlooked-for result of eight hours of discussion.

The Officers of the Conference have considered the proposal made by M. Muller to appoint a sub-committee,—a suggestion which I did not like to take the initiative of making. One delegation having manifested a desire for it, the Officers of the Conference supported the idea and set themselves to constitute a sub-committee, in designating the members of which allowance has been made for considerations both of a technical and of a geographical nature. It appeared advisable that the membership of this committee, whilst not too numerous, should yet not err in the contrary respect; a happy medium had to be found. The following names are put forward by the Officers of the Conference : MM: Muller, Tsang-Ou, Vallotton, Mance, Montarroyos, Bignami, Admiral Prica, Dr Reinhardt, MM. Kasama, Hussein Khan-Alai, d'Andrade, Alvarez, Seeliger, Lély, Detœuf and Scassi. As no-one else wishes to speak, this is agreed.

DISCUSSION OF ARTICLE 2

The CHAIRMAN (speaking in French).—We pass to the discussion of Article 2, which reads as follows :

Free Exercise of Navigation.

Subject to the provisions contained in Articles 4, 14 and 16, each of the High Contracting Parties shall accord the free practice of navigation to the vessels flying the flag of any one of the other High Contracting Parties on those parts of waterways specified above which may be situated under its sovereignty or authority.

M. LELY (Netherlands; speaking in French).—It is proposed by the Delegation of the Netherlands to re-draft Article 2, in order that free exercise of navigation may be admitted not only on waterways considered as international, but on all waterways. As I observed in the plenary meeting (1), the object to be attained, in conformity with

(1) See p. 8.

the terms of Article 23 of the Covenant, is the guarantee and maintenance of freedom of communications; and this should take the form of a clause in the Convention itself instead of that of a mere recommendation, as proposed by the second paragraph of the draft Preamble. I do not see anything to prevent free navigation on waterways becoming a reality for every nation, as much as free circulation on roads. We should need much persuasion to believe that this freedom consists merely in equal treatment for all flags, and that each State retains its liberty to make stipulations, provided only it does not draw a distinction between the subjects, property and flags of the different States, including the State under whose sovereignty or authority the waterway is situated. All vessels and so forth, shall be treated on a footing of perfect equality.

The following is the text of our amendment :

Subject to the provisions contained in Articles 4 and 16, each of the High Contracting Parties shall accord the free practice of commercial navigation to vessels flying the flag of any one of the other High Contracting Parties, on all the waterways situated under its sovereignty or authority.

The CHAIRMAN (speaking in French).—This is a question of considerable importance, and in order to simplify the discussion, I think that the Committee should keep within the limits of the idea expressed by M. Lely,—that is to say, the principle of free navigation on all rivers.

M. LELY (Netherlands; speaking in French). — On all *waterways*.

The CHAIRMAN (speaking in French). — Yes. It would be well if any delegations holding a directly contrary view—if there be any such—would state their objections to the adoption of this idea. The question is very simple. The Delegation of the Netherlands proposed to extend freedom of navigation to all waterways whatever their geographical features; this includes, of course, national waterways.

M. MONTARROYOS (Brazil; speaking in French).—If there is a country which can accept this proposal it is certainly Brazil, which has already freely opened up its national rivers to navigation. If a clause were inserted in Article 2 decreeing that all waterways shall be opened up freely to navigation, we should no longer need a definition, or a preamble, or, indeed, anything at all. Let us therefore omit the Preamble, Article 1 and the beginning of Article 2.

M. LELY (Netherlands; speaking in French).—I do not agree with the Brazilian Delegate. My amendment only implies that navigation shall be free on all waterways. The same must be done for waterways as has been done for roads in connection with motor traffic.

M. MONTARROYOS (Brazil; speaking in French).—The explanation given by the Delegate of the Netherlands is most significant. He asks us to open up all waterways to free navigation, and he then tells us that an enquiry must be made as to which are international waterways. It seems to me that if we endeavour to define international waterways, it is precisely with the object of indicating which waterways are to be open to free navigation. The sole object of definition appears to me to be to apply freedom of communication to these waterways, in virtue of Article 23. If all waterways are opened to international navigation, I fail to see the necessity of making a distinction between national and international waterways, since the provisions of Article 23 will be at once applied to every waterway without distinction. The aim of our Convention is to make it possible to navigate on waterways as you walk on roads. I am not quite clear as to the other object which the Netherlands Delegate has in view; for my part, I see only one goal,—that of free navigation.

International rivers are subject to the terms of certain Conventions. If we admit the existence of these Conventions, we are saying that rivers which possess a special navigation act shall retain that act. If, as the Czecho-Slovak Delegate has very justly observed, we institute a new regime for rivers which hitherto have not been subject to any navigation act, we should seek this regime from other sources than the spirit inspiring the major-

rity of existing navigation acts; for nearly all these acts, with the exception of those of America and the Act of Berlin,—which is one of the most liberal,—are more or less permeated with the military spirit. As the Italian Delegate remarked just now, the Treaty of Vienna has this serious defect, although, thanks to a German whose name escapes me for the moment, it proved an occasion for the adoption of the principles of free navigation. This being so, should we not keep before us that new spirit of which the Czecho-Slovak Delegate spoke? We must not fall into the old groove of former navigation acts, and in order to avoid doing this we must hold before us the principle of freedom of navigation. As for conditions of secondary importance, such as those resulting from the ordinary methods of navigation, these come within the scope of the Convention. By adopting the proposal of the Netherlands Delegate to open all waterways to free navigation, we should be obliged to allow to international navigation entry to all waterways, and, in consequence, I see no necessity for definition, enumeration or anything else.

M. ALVAREZ (Chile; speaking in French).—The proposal of the Netherlands Delegate to extend freedom of navigation to national rivers is of the greatest importance, but I much fear that the States concerned will not be disposed to accept it. Public opinion must be prepared by stages. The first stage would be the acceptance of the proposal which I submitted yesterday, the object of which is to restrict the Barcelona Conference to the passing of a recommendation to the effect that each State should itself declare its own rivers open to navigation.

M. WINIARSKI (Poland; speaking in French).—It seems to me that we have here an example showing us both the merits and the defects of the system we have adopted. If we include all rivers,—all navigable waterways without exception, we are obliged to treat them uniformly, and yet there is all the while a great difference between them. There are rivers which are exclusively national,—which do not at any point touch the frontiers of any other State. There may be an advantage in putting these rivers to some use other than navigation. If two or three States are riparians of the same river, may they not arrive at an agreement between themselves with a view to utilising the force of the stream in the manner most convenient to them? May they not allow their own nationals to navigate the river without admitting non-riparians? I do not think we shall ever be able to draw up a convention to apply equally to national and international rivers.

M. SEELIGER (Germany; speaking in French).—I should prefer not to express my opinion at the moment with regard to the fundamental point of the amendment proposed by the Delegate of the Netherlands, but I should like to point out that the inference drawn therefrom by the Brazilian Delegate does not seem to me fully justified. The fundamental principle to be established will be that of freedom of navigation. Perhaps this article can be placed first...

M. BARBOZA-CARNEIRO (Brazil; speaking in French).—In the Preamble itself.

M. SEELIGER (Germany; speaking in French).—Perhaps even in the Preamble if you so desire; but it is not only a question of establishing freedom of navigation, but also of finding a fundamental principle to facilitate navigation. Freedom of navigation on small rivers can perfectly well be provided for and engagements entered into to execute works, for example, on any given category of waterways; as also to refrain from levying dues, to establish a special uniform system of administration, police regulations, customs regulations, and so on. It would be perfectly easy to come to an agreement on this subject without touching on the principle of freedom of navigation; it seems to me that the question can be discussed without any fear of rendering the whole Convention unnecessary.

M. TSANG-OU (China; speaking in French).—With regard to the Netherlands amendment to Article 2, I should like to know whether all rivers, including those of common concern, are to be internationalised, and placed under an extremely liberal regime.

I fully understand the reasons for according freedom of navigation on national rivers. If the Netherlands Delegation continues to maintain its view, can we not postpone study of this question, which appears to me to relate to the Preamble rather than to Article 2? The amendment also deals with freedom of navigation on national waterways. There is some confusion of thought here. Article 2 concerns international waterways, whilst the amendment has reference to national waterways.

M. HOSTIE (speaking in French). — I am fully in agreement with M. Tsang-Ou in considering that the Netherlands proposal, although in the form of an amendment to Article 2, is in reality an amendment to the Preamble; for it amounts to relegating the Preamble to the Convention itself, whilst extending the scope of its provisions, with the effect, incidentally, of bringing this part of the provision within the scope of the clause on jurisdiction. That is the reason for which this clause was withdrawn from the Convention and inserted in the Preamble. This is in reality, therefore, a discussion of the Preamble, and I think that the simplest way would be to follow the advice of M. Tsang-Ou and postpone discussion of it until the time comes for us to deal with the Preamble.

The CHAIRMAN (speaking in French). — The question having now been made perfectly clear, I think that the Committee will agree with M. Tsang-Ou and M. Hostie to postpone it to a subsequent meeting. I would ask the Committee whether, subject to this, it has any amendment to propose.

M. TSANG-OU (China; speaking in French). — I propose an amendment to Article 2, although I support the wording of the present article.

You are aware that Asia is a very distant and ancient continent, of vast extent. By adopting this Article 2 you will thrust China suddenly into a situation which will be quite novel for her, and we shall thus be dragged into consequences which may be somewhat dangerous. If you consider that the accession of China to this Convention holds out advantages, I would request you not to ignore the history of the country, and to add simply these words : *...in default of existing conventions or treaties*. In this way China will be able to arrive at an agreement with the countries concerned.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I should like simply to recall the fact that, when a situation arose which was similar in some respects to the present one, the Committee on Transit took a decision with regard to procedure which would appear applicable to this new case; I am referring to the amendment submitted by the Indian Delegation. The view taken was that the question of any exception, or, if you will, of any adaptation of the Convention to certain special cases, could be much more usefully discussed when the Committee had before it the whole text of the Convention, and this was accordingly done for the Transit Convention. Could we not, in the same way, for this new amendment of the Chinese Delegation, postpone examination of it until we have the text of the Convention before us?

M. TSANG-OU (China; speaking in French). — I withdraw my amendment, and when we come to Article 17 I shall request that it be considered.

M. VALLOTTON (Switzerland; speaking in French). — I suppose it is clearly understood that, the question raised by M. Tsang-Ou being now reserved until the discussion of Article 17, we shall take up the study of the question raised by M. Lély. My personal opinion is that, unless, of course, the Netherlands Delegate sees any objection, consideration of this question should be deferred; but it should be understood that in deferring it we are not prejudging the question whether this freedom, which I will call simply freedom of circulation on roads, shall be the subject of an article, as proposed by the British Delegation,—which incidentally drew the attention of the Committee to some interesting points,—or else shall take the form of a preamble.

The statements which have been here made are most gratifying to us, in view of the fact that they emanate from States which were not represented on the Commission

of Enquiry at Paris. They are agreed as to the principle of free circulation of traffic, subject to the unrestricted exercise of its rights of sovereignty by the State through whose territory the traffic passes. This question may be made the subject of an agreement outside the special regime which we are discussing for certain routes. I believe all the States of Central Europe are unanimous in the view that this freedom of circulation for traffic exists *de facto*, that there is no question of something new, and that it may be described, in fine, as having proved a satisfactory experiment for all the States which have practised it. Those who feel any apprehension on the subject could with advantage enquire into the conditions obtaining in the countries where there is a considerable volume of traffic, such as the Netherlands. Belgium, France, Germany, who will be able to assert that their experience in this respect has been most happy.

The CHAIRMAN (speaking in French). — I believe I am voicing the unanimous sentiment of the Committee in replying to M. Vallotton that the solution of the question to which he made allusion is in no way prejudged.

The Committee will be pleased to learn that Article 2 may be considered as voted. Reservations have been made in the course of the discussion, notably with regard to the numbering of the articles, it being decided that Articles 4, 14 and 16 will be examined at a later date. Subject to these reservations, we may consider Article 2 as adopted.

M. ALVAREZ (Chile; speaking in French). — But the wording is not the final one.

The CHAIRMAN (speaking in French). — That is understood.

M. LELY (Netherlands; speaking in French). — I am in full agreement if it is only a question of the wording. I have the right to propose an amendment, and the amendment which I propose ought to be put to the vote.

I do not share the view expressed by M. Hostie. In my opinion articles find no place in the introduction or in the Preamble. There is another difference between the Preamble and the articles—namely, that recommendations may be expressed in the Preamble. I do not think a wise method was adopted in drawing up the Preamble of this Convention. The authors did not stop at expressing a wish, but included in it elements of substantive law, whereas the place for substantive law is in the articles themselves and not in the Preamble.

As for the Brazilian Delegate's contention that, in striving after a definition for international waterways, we should base our conclusions on freedom of navigation and equality of treatment, it would seem to me false. In looking for this definition we ought to take as a basis Article 338 of the Treaty of Versailles. With regard to freedom of navigation, that follows from the terms of Article 23 of the Covenant, which leaves us full freedom. It does not mention only certain international waterways; it is intended to apply to all routes of communication, and a distinction cannot be made between those which are international and those which are not.

The object of my amendment is simply to accord permission to all to navigate freely on a waterway in the same way as the inhabitants of the country itself, without any resulting obligation for the State, either in respect of upkeep or improvement. A State will have the right to close a waterway if this does not affect the equality to be maintained between its own citizens and the subjects of a foreign State. All that we have in view is free circulation on waterways as it exists on roads for wheeled traffic, including motor traffic. There is freedom to circulate on roads, although the State which allows this circulation is not under the obligation of keeping up or improving the roads, or of maintaining a committee for the settlement of any disputes which may arise. Free circulation such as this on a waterway cannot result from a recommendation expressed in the Preamble; it must be the subject of an article. It is for this reason that I ask that our amendment may be examined side by side with the article.

M. HOSTIE (speaking in French). — I do not think there is any disagreement between the remarks of M. Lély and my own suggestion, which was not that the amendment of the Netherlands Delegation should, if adopted, appear in the Preamble, but simply that it should be discussed at the same time as the Preamble, and that it was during this discussion that the question should be settled whether the provisions at present contained in the Preamble should remain there or should be transferred to the Convention itself, either in the same form and with the same scope, or in a different form and with a possibly wider scope.

M. LELY (Netherlands; speaking in French). — I shall be satisfied if the amendment is put to the vote at the same time as the article.

M. MANCE (Great Britain). — I do not know whether I am quite clear as to the significance of this decision. I wish to draw your attention to a point in the Netherlands amendment to Article 2, which we have not yet examined, and which treats of the *free practice of commercial navigation*. This proposed addition of the word *commercial* is important. If my memory does not deceive me, we decided at Paris that Article 14, which expressly excludes from the Convention certain categories of vessels, such as warships, provided us with an ample safeguard against the possibilities to which attention had been drawn by the Belgian Delegation, and with regard to which we were all in agreement. If, however, the Conference decides that it is necessary to insert the point in Article 2,—and this I should deprecate, for we should run the risk of including the whole Convention in Article 2,—then I think it would be necessary to adopt a different phraseology. I do not think that the words *commercial navigation* include all the vessels which would be entitled to freedom of navigation,—for example, I do not know whether ships in ballast, yachts or tourist steamers would be included. If it is decided to indicate in this article that the Convention only applies to commercial navigation, I think it would be necessary to say *vessels other than those specified in Article 14*, in order to make the intention quite clear. Article 14 was carefully thought out; but I am afraid that to mention the matter in Article 2 would be to overload the article, and I would therefore ask the Netherlands Delegate whether he does not agree that Article 14 provides sufficient guarantee.

The CHAIRMAN (speaking in French). — Is M. Lély able to accept this proposal?

M. LELY (Netherlands; speaking in French). — I thought it simpler to use the expression *merchant fleet*, but I agree with the British Delegate that, if Article 14 keeps its present form, this amendment could be discussed in connection with it; as a matter of fact, it would only be a question of the wording.

The CHAIRMAN (speaking in French). — I think that, subject to the amendment of the Netherlands Delegation, and to that submitted by M. Tsang-Ou, Article 2 may be considered as adopted.

M. BIGNAMI (Italy; speaking in French). — May not a vote be taken on the amendment of the Netherlands Delegation? I should like to state that it is with great pleasure that the Italian Delegation will vote for it; in 1885, as I have already had occasion to observe, Italy proposed to proclaim this very principle of freedom of navigation on all waterways, both national and international.

The CHAIRMAN (speaking in French). — The question is reserved; the time will be more propitious for the study of it later.

DISCUSSION OF ARTICLE 3

We now pass to Article 3.

ARTICLE 3

Equality of Treatment.

In the practice of such navigation, and subject to the provisions referred to in Article 2, the subjects, property and flags of all the High Contracting Parties shall be treated in every respect on the basis of absolute equality, no distinction being made between the subjects, property and flags of the different riparian States, including the riparian State under whose sovereignty or authority the part of a waterway in question may be situated, or between the subjects, property and flags of riparian and non-riparian States; it being understood, in consequence, that no exclusive rights of navigation shall be granted on such waterways to companies or to private individuals, and that in so far as concerns the application of the present article the High Contracting Parties shall recognise the maritime flag of vessels belonging to any High Contracting Party not possessing a sea-coast, when they are registered in the one place situated in its territory selected as the port of registration for such vessels.

There are three amendments, submitted respectively by the Chinese (1), Austrian, and Netherlands (2) Delegations.

M. REINHARDT (Austria; speaking in French). — Mine is only a minor amendment; it is more a question of drafting than anything else. I consider it necessary, in order to make the text clear, to add after the word *property* the phrase which we find in other articles : *either by reason of the point of departure or of destination, or of the direction of the traffic.*

M. HOSTIE (speaking in French). — As M. Reinhardt has himself very justly remarked, his amendment is rather a drafting amendment, inasmuch as it does no more than express the idea underlying the whole draft Convention, but I am nevertheless of opinion that it could with advantage be maintained, for I admit that in regard to the text it fills a hiatus.

ADMIRAL PRICA (Serb-Croat-Slovene State; speaking in French). — I should like to demonstrate that there is a difference between free navigation and free commerce. If we accept the addition proposed by the Austrian Delegate, we are laying down the principle of perfect equality both for exports and imports. I should like an explanation as to how this definition is to be reconciled with freedom to conclude different treaties of commerce, seeing that in all these treaties the most important points are precisely the starting-point and destination.

M. REINHARDT (Austria; speaking in French). — I can reply without hesitation to Admiral Prica's question; indeed, the opening words of the article are in themselves a sufficient answer : *In the practice of such navigation.* These stipulations have reference only to the practice of navigation, and the question of treaties has nothing to do with this.

M. WINIARSKI (Poland; speaking in French). — I should like to revive here a question which has already been raised in connection with transit,—that of towage. There must necessarily be a distinction. It would appear difficult to contemplate the possibility of establishing a monopoly of means of haulage on purely international rivers. The view taken by the Polish Delegation is that in connection with common

(1) The Chinese amendment reads as follows :

"Should the Conference decide that the definition of internationalisation applies to international rivers, without any distinction based on their general concern or limited concern, the Delegation proposes the following changes :

"ART. 3.—*Equality of treatment.*—After the words *subject to the provisions referred to in Article 2* add the words *or in default of existing conventions and treaties.*"

(2) The amendment of the Netherlands Delegation reads as follows :

"The Netherlands Delegation proposes to substitute for the words *on such waterways*, in Article 3, the words *on the waterways referred to in Articles 1 and 2.*"

or national rivers, the option should be left to riparian States. Riparians may in agreement among themselves either establish such means of haulage, or authorise one of their number to do so.

The CHAIRMAN (speaking in French). — The question is not dealt with in this article. Have you submitted an amendment?

M. WINIARSKI (Poland; speaking in French). — I think it would be wise to make a reservation in this place.

The CHAIRMAN (speaking in French). — We can discuss the question when that of the Austrian amendment is closed.

ADMIRAL PRICA (Serb-Croat-Slovene State; speaking in French). — I ask for a reservation to be made on the subject of police and customs dues.

The CHAIRMAN (speaking in French). — That does not come within the sphere of the free practice of navigation.

M. ALVAREZ (Chile; speaking in French). — Will the Committee turn to the passage in question in Article 3?

“...no distinction being made between the subjects, property and flags of the different riparian States...”

The Austrian Delegation wishes to insert after the word *property* the words *either by reason of the point of departure or of destination, or of the direction of the traffic*.

M. DETŒUF (France; speaking in French). — I should like to have an explanation as to whether the words *in the practice of such navigation* signify simply that this provision refers exclusively to conditions for navigation, and that customs questions are not referred to. I suppose it is clearly understood that it is only the material conditions of navigation which are referred to?

M. HOSTIE (speaking in French). — Yes; it is clearly understood that the words *in the practice of such navigation* do refer to the practice of navigation,—for instance, the sum total of the duties levied. The nature of the goods must not first be taken as a basis for dealing with them, and subsequently the starting-point or destination, and the direction which they take. That, in my opinion, is the significance of the amendment.

The intention of this article is to state that if, for example, navigation dues are levied on the basis of the quantity of goods carried, any differentiation must not be based upon the commercial origin or destination of such goods; and in the same way in levying dues no differentiation shall be made in respect of the direction taken by the vessel. On the other hand, the article leaves aside the question of customs dues, which is settled in a later article.

With regard to M. Reinhardt's amendment, it would appear to me to signify that goods must not be accorded treatment differentiated by reason of the point of departure, destination or direction. That, in my opinion, is the meaning of the addition.

M. REINHARDT (Austria; speaking in French). — That is how I understood the matter. The words *in the practice of such navigation* seem to me the keynote of the whole amendment. M. Hostie's explanation is quite clear; it is the view which I had in mind in submitting my amendment.

M. TSANG-OU (China; speaking in French). — Equality of treatment is accorded to vessels flying the flag of any one of the High Contracting Parties. Do the words *point of departure, destination*, also include imports and exports? For example, there may be goods coming from countries which have not acceded to the Convention. What treatment will they receive? Suppose a vessel sails from here to Shanghai with a cargo

belonging to a State which is not a party to the Convention. I shall treat nationals on board the vessel on a footing of equality, but how shall I act in regard to the cargo?

The CHAIRMAN (speaking in French). — Before an answer is given to this question, I would enquire of M. Seeliger whether he has a question to ask on this subject,—the Austrian amendment?

M. SEELIGER (Germany; speaking in French). — If I have understood the Chinese Delegate aright, it appears to him unnecessary to impose this restriction. He is perhaps right, for the provision would appear to me to constitute an amendment to the articles on due. Dues must not be differentiated, as the Austrian Delegate has pointed out.

In Article 16 of the first draft for the Danube Statute, after mentioning dues, which shall be levied on a footing of perfect equality, in the second paragraph we stipulate *that these must never constitute treatment differentiated by reason of the flag of the vessel... or of the starting-point, destination or direction of the traffic.*

M. TSANG-OU (China; speaking in French). — It is moreover clearly specified in Article 8.

M. HOSTIE (speaking in French). — I will reply at the same time both to M. Tsang-Ou and to M. Seeliger. In the first place, I would point out to M. Tsang-Ou that Article 8 concerns ports, which constitute an entirely different question. The question of goods may be intimately connected with that of the practice of navigation itself, in particular in the example cited by M. Seeliger,—that of the fixing of dues. There are, in fact, occasions when dues are calculated according to the nature of the goods, and in these circumstances it is possible that the scale of dues may be differentiated according to the direction taken by the vessel or the commercial origin, starting-point or destination of the goods. It is precisely this which must be avoided. This brings me back to the observation made by M. Seeliger, to the effect that consideration of this clause should be deferred until the discussion of the article on dues; normally its application relates to dues, although I can imagine other occasions on which it might be applied, and I think therefore that it would be wise to retain it in this place. For example, regulations for priority of passage through locks might be based upon the starting-point or destination; this would still relate to the practice of navigation, but not to dues. If, then, we are agreed on the substance of the amendment, I propose that it should be allowed to apply rather to this article than to another.

M. REINHARDT (Austria; speaking in French). — I should like to say simply that I myself had already thought of including this under Article 8, and if I gave up the idea it was because I said to myself that the title *equality of treatment* indicated that its proper place was in Article 3. As a matter of fact, it is generally a question of dues. I thought that the provision was more in place under Article 3, because that article deals with equality of treatment.

The CHAIRMAN (speaking in French). — The Committee would appear to be unanimously in favour of adopting the Austrian amendment.

Article 3 would then read as follows :

ARTICLE 3

Equality of Treatment.

In the practice of such navigation, and subject to the provisions referred to in Article 2, the subjects, property and flags of all the High Contracting Parties shall be treated in every respect on the basis of absolute equality, no distinction being made between the subjects, property, either by reason of the point of departure or of destination, or of the direction of the traffic, and flags of the different riparian States...

I will put the Austrian amendment to the vote.

The Austrian amendment was adopted.

M. TSANG-OU (China; speaking in French). — In respect of the voyage of a vessel, the flag covers the goods. I allude to the Resolution on Ports.

M. SEELIGER (Germany; speaking in French). — I should like yet another explanation on the subject of Article 3. Complete equality is accorded, firstly by the placing of foreign subjects on the same footing as nationals, and next by the right to the same treatment as that accorded to the most favoured nation. The question is whether both these rights are admitted in this article. I should like to point out that, in the Draft Statute for the Danube, we added that not only the subjects, property and flags of other States, whether riparians or non-riparians, should be treated on the same footing as the subjects of the riparians State, but also that they should enjoy most-favoured-nation rights. It might happen that a State did not accord any privileges to its own subjects, because in the absence of navigation it was not interested in according them; and it might also happen that the same State granted to one non-contracting Party privileges which were much greater than those granted to another. I should like some information on this subject. Is the intention to treat all nations on the same footing as nationals and to accord them rights most-favoured-nation?

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — Article 3 has served as the occasion for the raising of two fresh questions. There is the question of towage, of which M. Winiarski spoke, and the point raised by Dr. Seeliger. This latter question of relations with non-Contracting States to which more favourable treatment might be accorded than to Contracting States arises not only in connection with one particular article, but in connection with the whole of the Convention. In Article 15 we read :

Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present Convention any agreement relating to navigation on an international waterway which would be contrary to the terms of the present Convention if concluded between High Contracting Parties.

By the terms of the Convention there shall be equality between the Contracting Parties in virtue of this article, which may also be extended to include not only agreements but also treatment accorded *de facto*. More favourable treatment may not be accorded to one Contracting Party unless it be automatically extended to all the Contracting Parties. This is a question of a very general character which arises for all the provisions of the Convention, and not only in connection with that one which relates to navigation.

The point raised by M. Winiarski has already been studied in connection with transit. The Committee which examined it was unanimous in requiring that a clause should be included in the Convention on Waterways. The question would appear to be more suitable for examination in conjunction with Article 10; it is a question connected with the regulation of navigation. The commentary to Article 10 deals with the question of towage in connection with international waterways. In connection with national waterways the matter was dealt with in the Preamble.

M. ALVAREZ (Chile; speaking in French). — The last part of Article 3 speaks of the flags of land-locked States. A special Convention exists on this subject (Annex III (a) of the *Green Book*). There would perhaps be advantage in uniting the two questions, all the more because the texts are almost identical.

Mr. MANCE (Great Britain). — I fully realise the point raised by M. Alvarez. I would suggest that we adopt the article, whilst reserving to ourselves the right later on to consider whether the subject is not adequately safeguarded by this Annex III (a). In this way we shall give satisfaction to the States for whose benefit the article has been

adopted, and we do not run any risk in case, owing to some unfortunate accident, there is no Annex III (a).

M. VALLOTTON (Switzerland; speaking in French). — I will take this opportunity to thank the two last speakers, on behalf of the numerous land-locked States, for the interest which they have taken in the question. I see in this the earnest of an early report by M. Adatci on that Convention consisting of one small article, which is very near our hearts. We should like to thank you in anticipation for consenting to have this report read at the earliest possible moment. It might even be read before dealing with this Convention.

M. ALVAREZ (Chile; speaking in French). — I wish to state that I accept the proposal made by General Mance.

The CHAIRMAN (speaking in French). — I think that we have overcome all the difficulties in connection with Article 3 (1). Are there no other amendments? I will put the article to the vote.

The article as a whole was adopted with the addition proposed by the Austrian Delegation.

POSTPONEMENT OF DISCUSSION OF ARTICLE 4

The CHAIRMAN (speaking in French). — We will now deal with Article 4,—a difficult one.

ARTICLE 4

Restrictions.

Nevertheless, in exceptional cases justified by a combination of economic, technical and topographical circumstances, those among the High Contracting Parties who are co-riparian States of one and the same international waterway may, subject to the consent of all the States riparians of the waterway, or represented on its international Commission, if one exists, deny to the flags of all the non-riparian States the right to carry out the local transport of passengers and goods between the different States situated on that waterway.

M. TSANG-OU (China; speaking in French). — I propose that the discussion of Article 4 be deferred until that of Article 16. These two articles are really one.

The CHAIRMAN (speaking in French). — I put to the Committee the question whether the discussion of Article 4 (2) shall be postponed until we come to that of Article 16, in connection with which there is a whole series of restrictions to be examined.

Everyone being in agreement, we will pass to Article 5.

DISCUSSION OF ARTICLE 5

Administrative measures.

On the waterways provided for in Article 1 and situated under its sovereignty or authority, each of the High Contracting Parties reserves to itself all existing rights of issuing regulations and of taking the necessary measures for the general policing of the country by the application of laws and regulations with regard to customs, public health, precautions against diseases of animals and plants, emigration, immigration, and the import and export of prohibited goods, it being understood that these regulations and measures, which shall be reasonable and shall be applied on a basis of absolute equality to the subjects, property, and flags of every one of the High Contracting Parties, including the Contracting Party by which they are issued, must not unduly impede the free practice of navigation.

(1) See *Part IV* of the present volume.

(2) See end of the Fifth Meeting, p. 112, the amendments proposed to Article 4.

Amendments to this article have been submitted by the French, Netherlands and Bulgarian Delegations (1).

M. VALLOTTON (Switzerland; speaking in French). — I have no desire to initiate a linguistic discussion,—always rather a dangerous subject,—but I should like to appeal to that very remarkable Drafting Committee which we have the good fortune to possess, on the subject of the use of the word *raisonnable*. Would it not be possible to avoid the use of words which in reality do not possess in French the meaning with which they are here endowed? To me the word *raisonnable* implies *in conformity with the circumstances*. In French the word *certainly* has not the same meaning as it has in English; it is a great pity. We are engaged in drawing up the final text of a Convention, and I should like to make an appeal to the Drafting Committee—a serious appeal—to endeavour to rid us of a word which by dint of being applied in France will lose its meaning in English.

M. ALVAREZ (Chile; speaking in French). — I may inform you that the Drafting Committee has already considered this word in connection with Transit.

M. VALLOTTON (Switzerland; speaking in French). — I would venture respectfully to propose the variant *in conformity with the circumstances* as a substitute for *raisonnable*.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — In the French text of the Transit Convention the word *raisonnable* has been replaced by the word *équitable*.

M. VALLOTTON (Switzerland; speaking in French). — The question is still outstanding, and I think it would be well to examine it further. That was adopted subject to the final re-wording of the text. I persist in my belief that *raisonnable* is a most unfortunate word, and I propose the words *in conformity with the circumstances*.

The CHAIRMAN (speaking in French). — M. Vallotton's proposal will be submitted to the Drafting Committee.

M. PIERRARD (Belgium; speaking in French). — It would indeed be most desirable to find a substitute for the word *reasonable*, which has been translated into French by the word *raisonnable*, whereas Sir Hubert Llewellyn Smith has told us that *reasonable* ought to be rendered in French by *équitable*. But if we adopt for this Convention a procedure other than that adopted for the Transit Convention, we shall appear to have two systems of weights and measures. I therefore consider it essential that the Rapporteurs on the two questions should come to an agreement. I believe for the Transit Convention it was decided that the Final Protocol or the report should explain as clearly as possible the interpretation to be given to the word *reasonable*.

The CHAIRMAN (speaking in French). — The French Delegation has proposed the following amendment :

Substitute for the first part of the article the following words :

On the waterways or parts of waterways provided for in Article 1 and situated under its sovereignty or authority, each of the High Contracting Parties reserves to itself the right which it at present enjoys of issuing measures for the general policing of the country....

The remainder of the article as in the *Green Book* text.

M. DETŒUF (France; speaking in French). — The object of the amendment is to obtain greater clearness by altering the form. It is simply a question of maintaining the present position as regards the right of issuing regulations and of taking the necessary measures for the general policing of the country. The expression *all existing*

(1) The Bulgarian amendment reads as follows :
" In line 2 omit the word *existing*."

rights does not seem to the French Delegation to be very clear; it appears to refer to the rights possessed by the nation itself. That is the reason for the change proposed.

The CHAIRMAN (speaking in French). — It would seem that the principle contained in the amendment could be adopted, but as it is a question of drafting, we will refer it to the Drafting Committee for consideration.

The Delegation of the Netherlands has submitted the following amendment :

In article 5 substitute for the words *all existing rights* the words *the right*.

M. LELY (Netherlands; speaking in French). — This only involves a question of drafting.

M. MULLER (Czecho-Slovakia; speaking in French). — I approve the amendment of the Netherlands Delegation.

M. HOSTIE (speaking in French). — The question raised by these amendments is a very important fundamental one, of which the Conference should realise the significance before pronouncing a verdict upon it. The French amendment is an obvious improvement in the wording. It retains the idea, whilst employing the words *the right which it at present enjoys*. The amendment proposed by the Netherlands Delegation, on the other hand, appears to involve unintentionally a most important fundamental change. There are very numerous cases in which certain States, in virtue of existing conventions, do not enjoy the rights here enumerated. On certain waterways, for example, no customs or health formalities of any kind can be accomplished. Naturally our Convention cannot have the effect of modifying, in this respect any more than in any other, the particular right in force, in a manner which would reduce the facilities for navigation. Our Convention cannot have the effect—and this is the express meaning of Article 17—of modifying existing rights by reducing the facilities for navigation.

M. LELY (Netherlands; speaking in French). — Each nation has the right to issue regulations and to take the necessary measures for the general policing of the country. Our amendment represents nothing more than a drafting change with regard to which the Committee could rapidly arrive at a decision.

M. VALLOTTON (Switzerland; speaking in French). — This is an important question which ought to be referred for consideration to a sub-committee. In this respect I fully share the view taken by M. Hostie. The adoption of M. Lély's amendment would lead us into serious infringement of one of the general principles which serve as a groundwork for the whole Convention.

M. DETOEUF (France; speaking in French). — Both the principle and the question arising out of it are sufficiently clear to enable the Committee to take a decision without awaiting the opinion of a sub-committee.

M. VALLOTTON (Switzerland; speaking in French). — I agree with the French Delegation that, if M. Lély maintains his proposal, a vote should be taken. The Swiss Delegation cannot support this view.

M. MONTARROYOS (Brazil; speaking in French). — We have before us two important amendments, one submitted by the French and the other by the Netherlands Delegation. If we take a decision upon the French amendment, we shall in so doing have decided the fate of the Netherlands amendment; if the first were accepted, the second would automatically fall to the ground.

M. PIERRARD (Belgium; speaking in French). — For the same motives as those adduced by M. Hostie, I support the proposal made by M. Montarroyos. The expressions *the right* and *all existing rights* represent two entirely different ideas. This is a question rather of substance than of form.

M. VALLOTTON (Switzerland; speaking in French). — M. Lély will allow me to observe that he is placing himself in opposition to the theory of acquired rights which he defended and I seconded him in supporting. He is here proposing to modify the regulations by which a State may have already settled the question. I am obliged once more to declare that it is essential to maintain intact the principle which we have laid down; otherwise we are jeopardising our work.

The CHAIRMAN (speaking in French). — I put to the vote the amendment submitted by the French Delegation.

The amendment was adopted by 21 votes to 5.

M. WINIARSKI (Poland; speaking in French). — It does not seem to me that the adoption of the French amendment prejudges in any way the question raised by M. Lély's amendment, which it might be wise to refer to a sub-committee for examination, or else to postpone until the time comes to discuss acquired rights.

The CHAIRMAN (speaking in French). — Do you desire a vote to be taken on M. Lély's amendment?

M. WINIARSKI (Poland; speaking in French). — I simply wish to make certain reservations; we can take up the question again when dealing with acquired rights.

The CHAIRMAN (speaking in French). — The question is settled by the adoption of the French amendment.

M. WINIARSKI (Poland; speaking in French). — In view of the provisional nature of our decisions, I reserve the faculty to re—open the question.

The CHAIRMAN (speaking in French). — You are free to do so. In any case the French amendment is adopted, and the author of the Netherlands amendment does not require an independent vote for it.

M. SEELIGER (Germany; speaking in French). — I venture to make a suggestion on the subject of Article 5. In this article are catalogued the different classes of administrative measures concerning which you wish to accord to Contracting Parties the right to issue regulations, precautions against diseases of animals and plants, emigration, immigration and the import and export of prohibited goods. Possibly the protection of workmen might be added. There may be States which consider it necessary to issue regulations for the protection of workmen,—for instance, against excessive hours of work.

M. VALLOTTON (Switzerland; speaking in French). — This question should be postponed until later. The representative of the Labour Office has raised a parallel question, which is to be treated by itself (1). The Labour Office advocates uniformity, whereas M. Seeliger proposes regulations by each State separately.

M. SEELIGER (Germany; speaking in French). — These measures may not concern every State. One country may see an advantage in issuing regulations for the protection of workmen by means of measures which would be impracticable and inapplicable in other countries. Would it not be desirable from this point of view to create uniform legislation?

M. VALLOTTON (Switzerland; speaking in French). — I propose that the question be postponed until the time comes to discuss the proposal made by the International Labour Office.

(1) See p. 157.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The International Labour Office has just circulated a proposal concerning the recommendations of the Genoa Conference and Labour questions in general. It is essential that the Labour Office representative should be here when these questions are discussed.

The CHAIRMAN (speaking in French). — I am most grateful to M. Seeliger for having raised this question, which is one in which I have taken a personal interest for some time past. M. William Martin, who is a member of the International Labour Office, has come here specially in order to deal with it. I think we shall all agree to postpone discussion of it to a later date.

DISCUSSION OF ARTICLE 6

We now come to the third heading,—Charges. There is no amendment to Article 6.

M. VALLOTTON (Switzerland; speaking in French). — I did not submit an amendment to Article 6, because Article 1 contains a clause where by lateral canals are assimilated to the main waterway. Article 1 re-acts on Article 6; Article 6 does not say that lateral canals will benefit by the treatment laid down in this article. In view of the terms of Article 1 this was not necessary; but we ought to reserve the final wording of Article 6 until after Article 1 has been finally adopted.

The CHAIRMAN (speaking in French). — Subject to the reservation made by M. Vallotton, the Committee can begin the study of Article 7 to-morrow.

Mr. MANCE (Great Britain). — I should like to draw your attention to a slight error in translation, in order that the Drafting Committee may be apprised of it. In the English text occur the words *tariffs shall be calculated in proportion to...*; the correct translation would be *based on...* This does not alter the meaning at all, but it would be advisable for the Drafting Committee to correct the translation in this sense.

M. VALLOTTON (Switzerland; speaking in French). — Whilst on this subject, I consider that the English is not a correct translation of the important word *navigabilité*. It simply speaks of *navigable conditions*, which is certainly not as clear as the French word *navigabilité*. I propose that the text be put right by the aid of the British experts.

M. TSANG-OU (China; speaking in French). — I made a proposal on the subject of the Convention on Transit and that on Waterways, there being several articles equally applicable to both of them. In the Transit Convention there was no mention of transit on international routes; I made a proposal in regard to this (1). As we are discussing Articles 5, 6 and 7 on navigable waterways, we could at the same time examine the corresponding questions relating to transit. The Convention on Transit has been treated as if it applied only to national routes; no reference was made to the subject of transit on international routes.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The question of transit was dealt with in its most general form in the Transit Convention. That Convention applies to all waterways, whether national or international, in the same way as it applies to all railways, and, further, we included in the Draft Convention on waterways a special article indicating in what manner the Transit Convention is applicable on international waterways.

(1) For text of Chinese proposal see, p. 199.

M. TSANG-OU (China; speaking in French). — Suppose there is a State which accedes to the Transit Convention and not to the International Convention on Waterways?

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — That is precisely the question dealt with in Article 7, the object of which was to indicate that a State which had not ratified the Convention on Transit would, by ratifying the Convention on Waterways, have in part ratified the former, to the degree prescribed in Article 7.

In the reverse case the question is simple. The Transit Convention applies to the whole country, to every waterway, without the necessity of any enquiry on the part of the States as to whether any waterway is national or international. The opinion of the Jurists' Committee could be asked on the subject.

The CHAIRMAN (speaking in French). — I am in a position to reassure the Committee by stating that the Jurists' Committee has been officially apprised of this, and we shall know the result of its investigations in two or three days.

M. VALLOTTON (Switzerland; speaking in French). — M. Tsang-Ou's observation suggests another to me in connection with Article 7. Is it advisable to retain the sub-title *Customs Formalities*? The text cannot give rise to any ambiguity, but the opening sentence has not reference only to customs formalities.

The CHAIRMAN (speaking in French). — That will serve as our pabulum for to-morrow.

The meeting adjourned at 8. p.m.

Amendments proposed to Article 4 :

AUSTRIAN DELEGATION

Add, in the last line after the word *waterway*, the words *or between the ports and places situated on the territory of one and the same riparian State*.

CHINESE DELEGATION

Should the Conference decide that the definition of internationalisation shall apply to international rivers, without any distinction between general and limited concern, the Delegation proposes the following changes :

ARTICLE 4. — *Restrictions*. — Add, at the end of the article, the following : *The provisions of the present article shall also be applicable to rivers in respect of which special Conventions already exist.*

JAPANESE DELEGATION

Paragraph 1, add at the end : *unless otherwise provided by existing treaties with any third Power.*

Add a new paragraph as follows :

It is understood, however, that even when restrictions on the free navigation of an international waterway are imposed, subject to the provisions referred to in the preceding paragraph, any one of the riparian States or of the States represented on the International Commission of the waterway in question may at any time withdraw its consent to such a restriction, on three months' notice being given to the other riparian State or to the Commission; on the expiration of the above-mentioned period, the waterway shall be open to the vessels of all the High Contracting Parties, in conformity with the principles laid down in the preceding articles.

POLISH DELEGATION

Nevertheless, those among the High Contracting Parties who are co-riparian States of one and the same waterway, recognised as of international concern, may, subject to the consent of all, deny to the flags of any of the High Contracting Parties who are non-riparian States the right to carry out the local transport of passengers and goods between ports situated on that waterway which are under different sovereignty or authority.

SERB-CROAT-SLOVENE DELEGATION

At the end of Article 4 add the following paragraph :

Similarly, two States riparians of the same waterway may reserve the exclusive right of local transport between their ports situated on this waterway.

SIXTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Saturday, April 2nd, 1921, at 3.30 p.m.)

DISCUSSION OF ARTICLE 7 — DISCUSSION OF ARTICLE 8

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 7

The CHAIRMAN (speaking in French). — We will now pass to Article 7, which reads as follows :

Customs Formalities.

The transit of vessels, passengers and goods on international waterways shall be effected under the conditions established by the Convention on Freedom of Transit, with the following additional provisions :

When the two banks of an international waterway are within the same State, the customs formalities on goods in transit will be limited to placing them under seal or in the custody of a customs agent;

When an international waterway forms the frontier between two States, vessels, passengers and goods passing in transit shall be exempt from all customs formalities, except in those cases in which there are valid reasons of a practical nature for carrying out customs formalities in the part of the river which forms the frontier, but such formalities must not interfere with the facilities of navigation.

The dues provided for and authorised in Article 3 of the Convention on Freedom of Transit shall not apply to the transit of vessels, passengers and goods on international waterways.

Four amendments have been submitted, the first by the Chinese Delegation. M. Tsang-Ou has agreed that this amendment shall be postponed until somewhat later (1). We will now discuss the second amendment,—that of the Netherlands Delegation. It deals with questions of detail, but these questions are by no means unimportant.

M. LELY (Netherlands; speaking in French). — I ask the Committee to be so good as to hear our expert, M. Laman de Vries.

M. LAMAN DE VRIES (Netherlands; speaking in French). — The amendment of the Netherlands Delegation is a very simple one, and only deals with a purely technical improvement.

According to the present text of the article, goods in transit may be sealed. This includes the use of lead seals, which, however, form only one category of seals. There is another means of preventing the abstraction of goods; I refer to the use of padlocks, and we see no reason to exclude this simple and inexpensive method.

In the second place, when it is necessary to watch a vessel during transit, in order to prevent the secret unloading of goods, and when the vessel is of a considerable length, it is obvious that one official will not always be sufficient for this purpose,

(1) See footnote, p. 124, for text of Chinese amendment.

particularly at night-time. Moreover, one official cannot be expected to keep continuous watch, however long the period of transit may last. He must take rest after a certain time. For this reason a second customs agent may be necessary to relieve his colleague from time to time. The Netherlands Delegation therefore proposes to substitute the words *under seal or in the custody of customs agents* for the words *under seal or in the custody of a customs agent*.

M. HOSTIE (speaking in French). — The possible need for more than one customs agent was anticipated during the preparatory work at Paris, and the words *the agent* were retained for a reason of secondary importance. The last paragraph of the article lays down that the dues provided for and authorised in Article 3 of the Convention on Freedom of Transit shall not apply to the transit of vessels. It will be seen from the explanation given in the *Green Book Commentary* that this particular provision does not result in the abolition of the practice, for example, of supplying customs agents detailed to supervise a vessel with free board and lodging. The fear was expressed that if, instead of *an agent*, the words *customs agents* were used, it might give rise to abuses, and the number of agents detailed to survey vessels might be unduly and unnecessarily increased. I venture to place before the Committee the suggestion that the text of the Netherlands amendment might be adopted, while at the same time it might be noted in a commentary, which might well be placed in the report, that the right to free food and accommodation, customarily afforded, should be limited to the minimum number of agents strictly necessary to watch a vessel.

The CHAIRMAN (speaking in French). — Does the Netherlands Delegation see any objection to the insertion of this observation in the Report?

M. LELY (Netherlands; speaking in French). — None whatever.

The CHAIRMAN (speaking in French). — As there is no objection, the Netherlands amendment is adopted, and the observation of M. Hostie, who was one of the authors of the Draft Convention, and who has explained the motives which underlay the drafting of this article, will appear in the Report.

M. MONTARROYOS (Brazil; speaking in French). — Allow me to make a small observation on the title of the article,—*Customs Formalities*. The word *formalities* does not seem very appropriate. It does not state accurately what we wish it to mean. *Customs formalities* is a term used in current speech, but we are dealing here not with formal but real operations.

M. BIGNAMI (Italy; speaking in French). — I think that the Drafting Committee proposes to abolish all titles in all the Conventions.

M. DETCEUF (France; speaking in French). — But the word *formalities* also occurs in the text.

M. MONTARROYOS (Brazil; speaking in French). — I should prefer another word to be found, and I should like M. Hostie to give me some explanation regarding the word *formalities*.

M. HOSTIE (speaking in French). — The word *formalities* is consecrated by usage in European navigation acts. We are all anxious here to accomplish a work which shall not be exclusively European, but we should be very sorry to be obliged to abandon the use of the word *formalities*, because it might give rise to doubt.

M. MONTARROYOS (Brazil; speaking in French). — In these circumstances I withdraw my proposal.

M. HOSTIE (speaking in French). — Could we not use the title *Freedom of Transit*? That would be much more suitable as a heading for this article than *Customs Forma-*

lities. The object of the article is to regulate transit on waterways of international concern.

The CHAIRMAN (speaking in French). — Does M. Montarroyos agree?

M. MONTARROYOS (Brazil; speaking in French). — Yes.

M. VALLOTTON (Switzerland; speaking in French). — I venture to recall the fact that I put forward yesterday the same proposal as that of the Brazilian Delegate to change the title, which is not an accurate one.

M. HOSTIE (speaking in French). — And to substitute *Freedom of Transit*?

M. VALLOTTON (Switzerland; speaking in French). — Certainly, but of course only in the title; I did not refer to the text of the article itself.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I do not wish to speak merely in a spirit of contrariety, but if you read the text you will see that the question of customs formalities constantly arises. In the Transit Convention we are constantly speaking of freedom of transit, but here we have before us a purely technical question, and I think we should leave the text in its present form. However, if the Conference does not share my view, I will give way. The Brazilian Delegate tells us that he is somewhat uneasy as regards the phrase *customs formalities*, as it appears to refer to something abstract and not to practical work such as customs supervision. M. Hostie replies that this is an expression which has already been consecrated by usage; as the Brazilian Delegate does not press his point, let us leave the title in its present form.

M. VALLOTTON (Switzerland; speaking in French). — In order to satisfy both views, I propose the title *Freedom of Transit, Customs Formalities*.

The CHAIRMAN (speaking in French). — If there is no objection we will consider M. Vallotton's proposal adopted, and we will call the title *Freedom of Transit, Customs Formalities*. We will now consider the Italian amendment, which is of some importance.

M. VALENTINI (Italy; speaking in French). — The Italian Delegation has put in an amendment to omit the last paragraph of Article 7. Under the terms of this paragraph, dues provided for and authorised in Article 3 of the Convention on Freedom of Transit shall be abolished. The reason for the exception provided for in this paragraph is by no means clear, and should moreover be placed in the Draft Convention on Freedom of Transit, which refers to transport by land as well as by water. If the State through which transit takes place is entitled to take administrative measures to ensure that goods in transit by rail do not occasion smuggling, and if it may levy reasonable dues for the purpose, to cover the cost of such administrative measures, we do not know why it should not be allowed to levy similar dues when the goods in transit are conveyed by waterway, in view of the fact that the same administrative measures must be taken. When crossing a frontier the same formalities must be carried out (affixing of seals, delivery of customs vouchers, etc.), as for land transport.

The CHAIRMAN (speaking in French). — This matter has already been discussed, and I remember that at Paris views similar to those advanced by M. Valentini were expressed. Finally the Commission of Enquiry adopted this view, and I think M. Hostie can give us its reasons for so doing.

M. HOSTIE (speaking in French). — The last paragraph of Article 7 forms part of a compromise based on a number of texts from the Transit Convention and the Convention on Navigable Waterways. These texts were derived from Article 3 of the

Transit Convention, and from the last paragraph of the article from the Convention on Navigable Waterways now under discussion.

Two theories were put forward. According to one, the country through which traffic in transit passes should accord such transit to persons and goods free of charge. According to this theory, the levying of any dues would be contrary to the principle of freedom of transit, because it would really be intended to cover the cost of surveillance in the interests of the country of transit and not in those of the traffic. To take a concrete example, if the goods cross a country, and if this country pays customs officials to prevent these goods from remaining in the country, it is acting in its own interests. If it employs customs officials, it does so because it considers that it is in its own interests to protect itself. That is the first theory, and it is a logical and consistent one. The second claims that it would be unjust if the country of transit, should it happen to be a protectionist one, were obliged, on account of transit, to bear the expense of a customs organisation which might sometimes prove too great a burden for a traffic in which it was not concerned. This theory is also logical and consistent. We had either to choose between these two or to effect a compromise. We compromised by allowing certain small dues to be levied under the conditions and restrictions laid down in Article 3 of the Transit Convention, and we wholly excluded the levying of dues on international waterways. The Conference will judge our action.

M. WINIARSKI (Poland; speaking in French). — M. Hostie's statements may be reduced to the following: A State across which goods pass in transit renders no service to the State which sends the goods, but, on the other hand, this latter State renders great service to the former on condition that it does not allow its goods to remain in the territory across which transit takes place. The counterpart of this service is the burden of customs formalities and administration, which devolves upon the State of transit. Both at Paris and here I took the side of the Italian Delegation in this question, and I now second its proposal.

M. VALENTINI (Italy; speaking in French). — I thank M. Hostie for his explanation. As we all desire to arrive at an agreement, I think we may all recognise that to have placed the provision in this Convention, and not in the other, is a proceeding which is certainly open to criticism. I call for equality of treatment. It is only logical and just to insist that as the provision has been allowed in the Transit Convention, it should also be admitted in the Convention on Navigable Waterways.

Mr. H. O. MANCE (Great Britain). — I wish to make an observation on the Italian amendment. I should like to know what was meant by *customs vouchers, etc.* Article 7 distinctly lays down that when the two banks of an international waterway are within the same State, the customs formalities will be limited to placing goods in transit under seal or, as we have now agreed, into the custody of a customs agent or under pad lock, but when the international waterway forms the frontier, the goods in transit shall be exempt from all customs formalities except in certain very special cases. I should like, therefore, to know what are these particular *customs vouchers etc.*, referred to by the Italian Delegate. It seems to me that there is a difference between transit by an international waterway and transit generally, inasmuch as the permissible formalities are much more limited in the former than in the latter case.

The CHAIRMAN (speaking in French). — This question is a simple one. The reasons for and against have already been stated. I ask the Committee to find some common ground on which to arrive at complete agreement, without any necessity for a minority or majority.

Mr. H. O. MANCE (Great Britain). — I have not had a reply to my question. I asked what was the meaning of the expression *customs vouchers, etc.*, used by the Italian Delegate in the Italian amendment to Article 7, in view of the fact that such formalities involving customs vouchers would appear to be expressly excluded from transit traffic on international waterways.

M. HOSTIE (speaking in French).—General Mance considers that in the case in question all customs formalities other than placing under seal or in the custody of a customs agent, are excluded; the question of customs vouchers therefore does not arise.

M. BIGNAMI (Italy; speaking in French).—We see no reason for establishing different treatment for railways and navigable waterways. Why should we now make an exception in favour of the transit of vessels? The question of transit was settled in the Transit Convention. We have before us two opposing theories, and I think we should choose between them by means of a vote. Certain delegations hold one opinion and others hold an entirely different one, and it would be better to settle the question.

Mr. H. O. MANCE (Great Britain).—I have not yet expressed any opinion on the Italian amendment. I simply ask a question. If, as I had hoped, it had been said that it was an oversight to have used that particular expression there, then I should have been prepared to express an opinion as to whether we might omit that paragraph. Personally I do not attach much importance to it in the present form; but in order to avoid any misunderstanding I should have liked to clear up the point whether the Italian Delegation envisages customs vouchers for transit traffic on international waterways; if so, an amendment should have been moved to the first part of Article 7 and not to the last part.

M. BIGNAMI (Italy; speaking in French).—Customs vouchers are certificates, and it is only natural that small sums should be charged for the passage of goods.

M. HOSTIE (speaking in French).—There is a misunderstanding. General Mance stated that it was precisely formalities of this kind which were prohibited in paragraphs 2 and 3 of Article 7, on international, as opposed to national, waterways, and that consequently the question of remuneration did not arise.

M. BARRAIL (France; speaking in French).—In France a customs voucher does not always imply that a receipt for customs dues received must be presented; it may be nothing more than a document accompanying goods on which no dues are levied. Goods should certainly be accompanied by a document of this kind in order to be carefully identified on entering or leaving a country. That is the meaning of *customs vouchers* in respect of customs transit. In this particular instance I do not know whether we can discuss a question of such a technical and detailed nature without having before us—as the Italian Delegation has on several occasions requested—the exact text which we adopted in the Transit Convention. As we are constantly referring to it, it would appear difficult to draw up the text of the Convention on Navigable Waterways without having the other text before us. We might postpone a vote on the present text until we have before us the articles in their final form. The Committee must therefore be allowed a certain period of time to enable it carefully to consider and compare the articles of the Transit Convention with those of the Convention on Navigable Waterways.

M. HOSTIE (speaking in French).—I think the discussion is wandering from the point. That is not the question before us, which is a very simple one; paragraphs 2 and 3 of Article 7 lay down a special system of customs formalities for international navigable waterways; according to this system customs vouchers will in no case be established...

Mr. H. O. MANCE (Great Britain).—...for traffic in transit.

M. HOSTIE (speaking in French).—As General Mance remarked, there can be no question of remuneration for this formality. The only formalities allowed for transit are that seals or padlocks may be affixed and customs agents may be placed on board vessels for surveillance purposes. That is General Mance's first point. He then asks whether it was not by inadvertence that customs vouchers were mentioned in the

Italian proposal. If it appears that a mistake has arisen regarding the first point, I presume that General Mance will continue his argument.

Mr. H. O. MANCE (Great Britain).—That is so.

M. BIGNAMI (Italy; speaking in French).—When reference is made in the second paragraph of Article 7 to placing under seal, this does not exclude the granting of certificates.

M. HOSTIE (speaking in French).—Yes, it does.

M. BIGNAMI (Italy; speaking in French).—If certificates are granted, they would, as a matter of fact, constitute customs vouchers; it is in this sense that we interpret the article. They are given for other goods in transit, and we do not see why any difference should be made.

M. HOSTIE (speaking in French).—I think there is a complete misunderstanding. In these circumstances, what would the purport of the article be? It reads:

When the two banks of a national waterway are within the same State, the customs formalities on goods in transit will be limited to placing them under seal, or in the custody of a customs agent.

Apart from the placing of seals on the hatches of the vessel, all formalities are prohibited. According to the text, it is absolutely forbidden to introduce any documents whatever; that is the meaning of the text.

M. BIGNAMI (Italy; speaking in French).—This seems to us quite impossible. Goods must be identified and be given a certificate of identification.

M. WINIARSKI (Poland; speaking in French).—With regard to Article 7, the *Green Book* (1) says that:

But nevertheless this paragraph is not to be interpreted as abolishing or modifying obligations or usages existing on certain waterways, whereby vessels in transit provide food and accommodation for customs officials while on board.

We are increasing the number of international navigable waterways. We shall thus have navigable waterways of less importance than those hitherto dealt with. According to this commentary, expenses for maintenance and upkeep appear to be charged to vessels in transit on large international waterways. But what has been done on large waterways could not be done on small ones, as such a practice does not exist. I desire once more to support the Italian proposal; I consider it excellent.

Mr. H. O. MANCE (Great Britain).—As regards the Italian proposal, I myself have a perfectly open mind, and I will accept any solution agreeable to the Committee; I do not attach much importance to whether the paragraph is retained or not, but I do hope the Italian Delegation will not go back on what we have decided. From the very beginning, I have never heard any doubt expressed as to the meaning of the first part of Article 7.

M. BIGNAMI (Italy; speaking in French).—No, Italy never looks back.

M. TSANG-OU (China; speaking in French).—M. Hostie has mentioned that, according to paragraph 2, there were no other formalities possible except the affixing of seals. May I remind M. Hostie that restrictions are only allowed within the limits fixed by Article 7 of the Transit Convention,—that is to say, when they are necessitated by danger from foreign sources or by emergencies affecting the safety of the State? I think that the last paragraph conflicts with this commentary, and I ask M. Hostie to be so good as to give us an explanation on this point.

(1) See p. 423.

M. HOSTIE (speaking in French).— I do not think there is any contradiction, because so long as the seals are respected and nothing unusual takes place on board, the identity of the goods in transit will certainly be safeguarded. But in the event of actual or alleged *force majeure*, it may become necessary to open the hatches and break the seals. It is obvious and all navigation acts contain provisions on this point that the State in whose territory the vessel is situated may then take measures to protect itself against possible fraud. I should like to return for a moment to the fundamental point of the limitation of customs formalities on international waterways. I am thinking particularly of certain schemes to revise the Convention of Mannheim, in which it is specially enacted that the only methods of procedure to safeguard the rights of the State of transit are surveillance by customs officials and the placing of customs seals. I think that we should be taking a definitely retrograde step if we entertained the idea of doing anything else.

Mr. H. O. MANCE (Great Britain). — Hear, hear!

M. HOSTIE (speaking in French). — I hope I may be excused for speaking so often, but I should like to draw the attention of the Italian Delegation very seriously to a point which has completely escaped notice in the discussion. It is a point which had not even occurred to me, and it is, I think, the real starting-point of the whole affair. The Treaties of Peace contain an article which in the Treaty of Versailles is numbered 334. This article establishes a provisional regime for a number of waterways (the Elbe, Oder, Danube, and so on) and, as regards transit on these waterways, makes reference to the article in the same Treaty in which the principle of freedom of transit is laid down; this principle itself is drawn up in such a manner as to exclude any possibility of levying dues. It appears certain, therefore, that, as regards the waterways referred to in this article, we should be going back upon the regime established by the Treaties of Peace. I should like to draw the attention of the Italian Delegation to these consequences, which might be considered unfortunate.

M. BIGNAMI (Italy; speaking in French). — My reply is simply that there are experts here—particularly French and Dutch experts—who consider certificates necessary, if only for the sake of statistics. You see that the question is more complex than we thought. We believe it would be better to refer it for the consideration of a Committee of experts composed of three, four or five members. We shall see whether this Committee will prove us right or wrong. We consider the question sufficiently serious for this procedure to be followed. There is here a question of equality of treatment as regards other goods in transit which use means of transport other than waterways.

M. WINIARSKI (Poland; speaking in French). — I cannot help pointing out to M. Hostie that the regime established by the Treaty of Peace is in more than one respect exceptional. As we are establishing a normal regime, it would not be good policy to perpetuate a situation which everyone considers exceptional.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I regret that I am compelled to refer once again to the serious observation which the Italian Delegate has made. He assures us that the regime established by Articles 332 to 338 of the Treaty of Peace must be considered as an exceptional regime.

When we consider dispassionately the commentary of the authors of the text, we cannot for a moment admit that their intention was to establish an exceptional regime. They stated expressly—particularly in reply to the German Delegation and in the official text drawn up by the Principal Allied and Associated Powers—that this regime must be considered in some sort as part of the future General Convention which the intention was to produce as, to a certain extent, a re-casting of it. It was never considered that this regime was an exceptional regime. The Principal Allied and Associated Powers stated the exact contrary. That is the fundamental point, and if we read in any other light the texts which we are obliged to take into account, we should be making a complete travesty of the intentions of their authors; we are obliged to take

these texts into account, because they form a commentary on the articles of the Treaties of Peace referred to in the resolution by which this Conference was convened.

The CHAIRMAN (speaking in French). — Permit me to tell you what I know of this subject, the importance of which no-one will fail to realise. As a member of the Drafting Committee, I helped to draw up the conditions of peace with Germany. As M. Haas has said, we considered that the clauses of the Treaty of Peace contained excellent principles which could be applied universally, and it was because we considered these principles to be good that we asked Germany to accede to them. This was also the spirit of the reply sent to that Power two years ago. In these circumstances I think we may consider these points as definitely settled.

M. WINIARSKI (Poland; speaking in French). — Article 338 contains the following words :—

(this) regime ...shall be superseded by one to be laid down in a general Convention drawn up...

There is no text which binds us to establish this Convention; the Treaty of Peace has left us full liberty in this respect.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Could not my proposal (1) to guarantee freedom of transit—the proposal based on treaties already in force for more than half a century in South America—be referred to the Sub-Committee which is to be formed? It refers to the limitation of customs formalities as regards transit. This proposal was referred to a special Sub-Committee which was occupied with this very question of the proposal to limit customs formalities. At the time I brought the text of the Treaty of 1857 between Brazil and Argentine to the notice of this Sub-Committee in order that no opportunity of progress should be lost. It was decided to postpone the discussion, and for this reason I ask that this question now once more be raised and referred to a Sub-Committee.

M. BIGNAMI (Italy; speaking in French). — I also am of this opinion.

The CHAIRMAN (speaking in French). — I put to the vote the motion to refer to a special sub-committee the amendment proposed by the Italian Delegation, and the proposal to which M. Fernandez y Medina has alluded.

The motion was carried.

The special Sub-Committee might be composed of the following nine members : MM. Winiarski, Pierrard, Fernandez y Medina, Bignami, Detœuf, Kasama, General Mance and MM. Muller and Vallotton.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — This special Sub-Committee will have to examine the last paragraph of Article 7, which refers to Article 3 of the Transit Convention.

(1) The text of the Uruguayan Delegation's amendment to Article 5 of the Draft Convention on Freedom of Transit is as follows :— "Vessels proceeding from a se a port or river-port of the State whose flag they fly, towards another port of the same State or of another State, shall not be subjected, during transit through the territorial waters of intermediate States, to any examination or delay except such as are necessary for the production of bills of health, pilotage formalities, recognition of nationality, point of departure and destination. The nationality, point of departure, destination and tonnage shall be corroborated by certificates from the authorities of the port of departure bearing the consular visa. Should *bona fide* suspicions be entertained, or should the necessary certificates not be forthcoming, such vessels will be required to show passports, list of crew and manifest of cargo.

Reasons.— The addition proposed by the Delegation of Uruguay is the almost literal reproduction of Article 7 of the Treaty between the Argentine and Brazil, dated November 20th, 1857, and experience clearly shows that any provision or restriction is quite useless for ensuring the granting of facilities or guarantees to transit in face of the temptation — unfortunately very frequent — to which customs authorities are everywhere prone, to carry out their duties with excessive zeal, to the detriment of the most important interests of commerce and international navigation, and even of the guarantees which States are entitled to enjoy.

For Report of Sub-Committee on this question, see *Verbatim Records and Texts relating to Convention on Freedom of Transit*, pp. 120-121.

The CHAIRMAN (speaking in French). — The Serb-Croat-Slovene Delegation has submitted the following amendment :

I. Add at the end of the third paragraph the words : *The measures indicated in the preceding paragraph, however, may also be applied in this case in order to simplify customs formalities.*

II. The text of the last paragraph of Article 7 should be reserved for adaptation to the new text of Article 3 of the Transit Convention when it shall be adopted.

III. Add at the end of the last paragraph the words : *it is understood that the measures provided for in Article 6 shall be applied also to vessels in transit, and that the board and lodging of the customs agents may be charged to the vessel in transit.*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The adoption of these amendments does not give rise to any difficulty, as their terms have already been inserted in certain articles of other conventions, and in the paragraphs of Article 7.

The first amendment does not require comment; it is sufficient to read the text carefully. I should like to remind you that it entails the addition, after the third paragraph, of the words : *the measures indicated in the preceding paragraph, however, may also be applied in this case in order to simplify customs formalities.*

The second paragraph refers to the case in which the two banks of an international waterway belong to one and the same State, and provides for the customs formalities of placing under seal or in the custody of a customs official.

The third paragraph deals with the case of an international waterway which forms the frontier between two States; vessels, passengers and goods passing in transit shall be exempt from all customs formalities except in those cases in which there are valid reasons of a practical nature for carrying out customs formalities in the part of the river which forms the frontier.

In this second case the Commission of Enquiry did not consider placing under seal or in the custody of a customs official to be necessary. In my view more precautions should be taken than in the case of a river crossing a State. In order to make my idea clear, allow me to take an instance which is a little unusual, but which will convince you that what we are asking is just, and that if the Conference does not support our point of view we shall be involved in inextricable difficulties. The Drave, which forms the frontier between our State and Hungary, and which has a winding course, is crossed 25 or 30 times over a length of less than 200 kilometres by the frontier-line, which is quite straight. What measure do you wish us to apply here ? Placing under customs seal or under the supervision of a customs official is out of the question. You will see that however good may be the intentions on which certain clauses, whether of conventions or treaties, are based, they may have to be modified or improved. It seems to me necessary to add at the end of the third paragraph the measures provided at the end of the second paragraph. If you think that paragraph 3 allows of the same measures as paragraph 2, we shall be happy to note this fact, but we should ask for the text to be amended. I think that we should begin with the first question, and with your permission I will now explain my point of view. If I remember aright, when we drew up the Draft Convention at Paris, the requirements laid down in the third paragraph were expressly called for by the Netherlands Delegation to meet a special case,—that of the Rhine. The intention was to avoid compelling the Netherlands to change its customs formalities completely in order to introduce the system of placing under seal or in the custody of a customs official. This paragraph was drawn up in its present form, then in order to avoid compelling that country to change the system of administration of its customs frontier, the working of which gives satisfaction. But in my view contingencies other than those to which this paragraph refers should not have been excluded. I have cited another instance, in which the frontier-line does not follow the winding course of the river, but cuts it in two, and this, I think, necessitates the provisions of paragraph 2; but I will quote other cases which are not met by these provisions.

You may tell us to employ the same methods as the Dutch; but that would compel us to instal about 60 customs stations, in order to fulfil the formalities laid down in paragraph 2. In order to meet every case I ask that the article be drawn up in the most general terms. For this reason we propose to add in the text of the third paragraph

the words *the measures indicated in the preceding paragraph, however, may also be applied in this case in order to simplify customs formalities*. It refers to rivers which form the frontier between two States. The text may be altered; our desire is that it shall meet the cases which I have brought to your notice. We are not greatly concerned as regards the actual wording.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I think that we could arrive at a settlement which provides the guarantees for which M. Avramovitch asks.

The CHAIRMAN (speaking in French). — Are you in favour of the principle of his amendment ?

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Certainly, particularly as regards facilitating navigation.

Mr. H. O. MANCE (Great Britain). — I do not think it is necessary to refer this to a sub-committee. I think we all agree that the case put by M. Avramovitch is met by the third paragraph of Article 7. In my opinion it is precisely this kind of question to which this article refers. You will remember that this paragraph was drawn up at Paris in fairly general terms, in order to meet situations of a similar nature which we thought might exist in other parts of the world. Here we have before us a situation of this kind. I think that our text is most satisfactory, in that it fully meets the question with which we have to cope. We suggest that we should merely mention in the Records, or perhaps in the Report itself, that this was the opinion of the Committee. We could thus settle the question immediately.

M. HOSTIE (speaking in French). — I was about to make the same suggestion.

M. AVRAMOVITCH (Serb-Croat-Slovene State). — The question is so serious that I cannot rest content with observations inserted in the Records. Allow me to say in all candour that some of the observations which have been inserted in the General Conventions are much less important. Moreover, you must not think merely of meeting our case alone,—there may be others; others may even arise when the Convention is put into execution. Why should we remain content with the mere insertion of a passage in the Records ? If it were only in order to show respect for what has been done I should not object, but we must try to improve what has been done.

The CHAIRMAN (speaking in French). — Would you be satisfied if we inserted in the Report a carefully considered text ?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — No, Mr. Chairman. I go so far as to consider that other Delegations should not merely ask whether the article meets their own particular case or not. It is our duty here to establish principles, and I ask for a general provision to be inserted in the Convention itself.

M. HOSTIE (speaking in French). — I agree with General Mance. I do not understand why the text, which suffices for situations identical to those brought to our notice by the Netherlands Delegation, should not suffice in your case. We ought not to put anything in the Report. If we do insert anything in it, it would be a superfluous precaution. It would be from a text of the Convention itself that you would derive the right in such cases to take such practical action as may be required. Allow me to say that your amendment destroys the whole paragraph. It would in effect say that when a river forms a frontier it will always be permissible to treat it as if it did not form a frontier, whilst the text in its present form already meets your contention.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If we do not clearly indicate what we mean in the texts, we shall be obliged later, when we have to refer to them, to interpret them—I will not say arbitrarily,—but literally, and

we may be told that our case is not covered by the Convention and that a fresh solution must be sought. We do not wish to incur the risk of having to seek for a solution later, when we may do so now.

M. TSANG-OU (China; speaking in French). — I had prepared an amendment to the same effect (1), but I now support M. Avramovitch's proposal. I am thinking of the river Amur, which is 1,200 kilometres in length. We will not instal a customs cordon along the whole length of this river for a mere question of transit. Without going as far as M. Avramovitch, I ask that we should be allowed to have a common centre for customs control. The two countries concerned might choose a point at which this control could be carried on. We ask to be allowed the right of control for the sake of national security.

The CHAIRMAN (speaking in French). — It is understood that this question will be submitted to the Sub-Committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I ask that M. Tsang-Ou should sit on the Sub-Committee.

M. TSANG-OU (China; speaking in French). — I thank you, but I have already a great deal of work to do. Moreover, if your proposal is adopted, mine is adopted automatically. Would not M. Vallotton agree to become a member of the Sub-Committee?

M. VALLOTTON (Switzerland; speaking in French). — I would not advise you to put me on this Sub-Committee; I should be obliged to vote against you. After all the discussion which has taken place I should like to say that I am perfectly satisfied with the present text, and I consider that the wishes of all are fully met. I am sure M. Tsang-Ou, who has always supported measures of a liberal nature, will accede to the proposed system.

M. TSANG-OU (China; speaking in French). — M. Vallotton cannot expect me to compromise a frontier of 1,200 kilometres in length in order to uphold my reputation as a liberal man.

M. VALLOTTON (Switzerland; speaking in French). — No, but your proposed text betrays your intentions.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I now come to the second point of our amendment; as regards the end of Article 7 we propose that the text should be reserved in order to adapt it to the new wording of Article 3 of the Transit Convention, when this has been adopted. We will speak of this question later.

I will now pass to the third point. This is a matter which appears to me just and equitable, referring as it does to a similar subject in the Transit Convention. The proposal is to add to the end of the last paragraph of Article 7 : *it is understood that the measures provided for in Article 6 shall be applied also to vessels in transit, and that the board and lodging of the customs agents may be charged to the vessel in transit*. It would be unfair not to levy a small charge, not of a fiscal nature, but intended to defray the cost of works to maintain navigability. You declare certain rivers to be international, and on this basis you impose charges, but you do not give any rights in compensation.

(1) The text of the Chinese amendment reads as follows :

"Should the Conference decide that the definition of internationalisation shall apply to international rivers, without any distinction between general and limited concern, the Delegation proposes the following changes :

"ARTICLE 7. - *Customs formalities*. — Delete, from the words *exempt from all customs formalities*, and substitute the words *subject to customs control to be established at a point on the river forming the frontier*".

M. HOSTIE (speaking in French). — M. Avramovitch's request is certainly the result of a misunderstanding, as it is met by Article 6, which enacts that a vessel in transit may be subjected to dues for the upkeep and improvement of waterways.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Is that really so?

M. HOSTIE (speaking in French). — It is all the more certain because in the Transit Convention itself it is already laid down that provisions regarding charges shall be formally extended to include navigation charges.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am still doubtful, because Article 3 refers only to dues, and Article 4 to transit. If mention is made of this point in the Records, I am prepared to withdraw my proposal, but it will have to be stated most explicitly.

M. HOSTIE (speaking in French). — It refers, of course, to the same charges as for other vessels.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We are of course in favour of the principle of equality and reciprocity.

The CHAIRMAN (speaking in French). — We now come to the question of board and lodging.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — This question will be dealt with in Sub-Committee, and I think it is adequately met by the Italian proposal. If, however, this proposal is not accepted, I reserve the right once more to bring forward our own. I have always been opposed to this idea of boarding a customs official in the vessel which he has to supervise. I have always held that it would be better to levy a charge for this purpose rather than to provide a customs official with a good bed, food and drink under all kinds of conditions. As I am told, however, that this practice already exists in certain countries and cannot be changed, we will accept it, but we ask for compensation. M. Hostie tells us that if certain States have organised customs services, it was both in their own interests and in order to protect themselves. I say that if you think that certain States are faced with a danger which compels them to take measures in self-defence, it is only logical that you should compensate them for the expenses which you compel them to incur. If the Italian proposal is not adopted, we shall maintain our own.

The CHAIRMAN (speaking in French). — With this reservation the question is referred to the Sub-Committee.

M. MULLER (Czecho-Slovakia; speaking in French). — An amendment to Article 7 has been distributed by our Delegation.

The CHAIRMAN (speaking in French). — The first amendment consists of the following : Add at the end of the last paragraph : *...except in the case of public services for towage provided for in the Preamble.*

M. MULLER (Czecho-Slovakia; speaking in French). — Article 3 of the Transit Convention lays down that vessels in transit shall not be subject to any special dues in respect of their entry, exit or transit, but that on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration which such transit may entail on the Powers through whose territories the traffic passes in transit. Since the Preamble of the Convention admits the possibility of establishing public towage services or other means of haulage subject to a monopoly, provision would have to be made for levying dues.

The CHAIRMAN (speaking in French). — Let us consider this question first.

M. MULLER (Czecho-Slovakia; speaking in French). — If the amendment of the Italian Delegation were accepted, ours would become superfluous. I therefore propose to refer it also to the Sub-Committee which is to examine the Italian amendment.

The CHAIRMAN (speaking in French). — That would give rise to confusion.

M. HOSTIE (speaking in French). — I may be wrong, but I have the impression that the charge for towage in question has nothing to do with the charges which would be allowed if the Italian proposal were adopted. Should this proposal be adopted, Article 7 would allow a small charge to be levied for statistical purposes and for customs supervision, whereas we are now dealing with the possible payment for services rendered by a public towage service, the establishment of which would be allowed under the terms of the Convention. This would certainly refer to payments taking the form of the charges provided for in Article 6 of the Transit Convention. I think therefore that any amendment is unnecessary, as this article expressly allows such charges to be established.

M. MULLER (Czecho-Slovakia; speaking in French). — In view of this explanation, I withdraw the first of my amendments to Article 7.

The CHAIRMAN (speaking in French). — The second amendment to Article 7 proposed by the Czecho-Slovak Delegation consists in adding the following paragraph at the end of the article :

The provisions of Article 5, paragraphs 2 and 3, of the Convention on Freedom of Transit, shall not be applicable in cases where the transit is effected by vessels navigating under customs seal.

M. MULLER (Czecho-Slovakia; speaking in French). — I remember that this question was dealt with when Article 5 of the Transit Convention was discussed, and it was referred to a sub-committee which was to draw up the final text (1). The Sub-Committee prepared a report for the Committee on the question raised by the French Delegation, and a long discussion took place. The French Delegation, in its amendment to Article 5, proposed the addition of a paragraph to the effect that :

This provision shall not apply whenever transit is carried out by vessels proceeding by waterway under customs seal.

The French Delegation stated that it did not press the retention of this provision in the Convention, but similar provisions have been put forward by other Delegations, in particular those of Czecho-Slovakia and Uruguay. The Sub-Committee discussed this question at great length, and unanimously decided to establish more complete freedom on international waterways than anywhere else. Consequently, the idea contained in the French amendment, and again put forward by the Czecho-Slovak and Uruguayan Delegations, was an extremely important one. The Sub-Committee, however, unanimously decided not to propose the introduction of a similar paragraph into Article 5 of the Transit Convention. The Sub-Committee, indeed, was fa'ed with almost insurmountable difficulties. It was of opinion that this question should again be considered in connection with the Convention on Navigable Waterways, and that it should not be treated in the Convention on Freedom of Transit, although it was in entire agreement as regards principle. For these reasons we propose the following amendment at the end of Article 7 :

The provisions of Article 5, paragraph 2 and 3, of the Convention on Freedom of Transit shall not be applicable in cases where transit is effected by vessels navigating under customs seal.

M. PIERRARD (Belgium; speaking in French). — It is a mistake to say that this amendment refers to Article 5, paragraphs 2 and 3, of the Transit Convention,—it

(1) See *Verbatim Records and Texts relating to the Convention on freedom of transit*, pp. 76, 82 and 119.

really refers to Article 3. Moreover, apart from this fact, I should like to remind the Committee that M. Serruys, on behalf of the French Delegation, did propose an amendment similar to that now before us. I pointed out to the Committee to which the amendment was referred that a distinction would have to be drawn between sea-going vessels and river-craft, since it may be possible to place river-craft under customs seal, but it is physically impossible to do so in the case of sea-going vessels. This point, however, has been considered from a broader point of view. I pointed out to M. Serruys that if his amendment were adopted, it would produce the opposite result, namely, that persons, goods, mails and postal packets, and so on, would be subject to dues. M. Serruys was struck by my remark, and of his own accord withdrew his amendment. At the plenary meeting the question at first was whether the provision should be included in the Final Protocol, but in Sub-Committee it was decided that the amendment should be rejected. I now ask the Czecho-Slovak Delegation to withdraw its amendment, for the same reasons which led the Belgian Delegation to act as it did in the Sub-Committee of which it formed part. In any case, it would be impossible for me to vote for it, for reasons which were fully entered into by M. Serruys.

M. HOSTIE (speaking in French). — As we have already referred to the Sub-Committee the text which is dealt with in the Czecho-Slovak amendment it would only be logical, as M. Medina said, to refer the Czecho-Slovak amendment to it also.

M. PIERRARD (Belgium; speaking in French). — I do not object.

The CHAIRMAN (speaking in French). — This question will be considered in Sub-Committee on Monday morning. Subject to this reservation, the discussion of the article is closed (1).

DISCUSSION OF ARTICLE 8

The CHAIRMAN (speaking in French). — We will now consider Article 8, which reads as follows :

Use of Ports.

Subject to the provisions of Articles 4, 14 and 16, the subjects, property and flags of all the High Contracting Parties shall enjoy equal treatment with the subjects, property and flags of the riparian State under whose sovereignty or authority the port is situated, as regards the use of all the ports situated on an international waterway, particularly as regards port dues and charges; it being understood that the goods to which the present paragraph shall apply are those originating in or proceeding from or to the territory of one of the High Contracting Parties.

The equipment of ports situated on an international waterway, and the facilities granted to navigation in those ports, shall be available for public use to such reasonable degree as corresponds with the free and effective practice of navigation.

All customs, local octroi or consumption duties levied on imports and exports through the said ports must be uniform, irrespective of whether the vessel carrying or to carry the goods flies the flag of the national State or that of any one of the High Contracting Parties.

In the absence of special circumstances reasonably justifying an exception on account of economic needs, these duties shall be fixed on the same basis and at the same rates as similar duties applied at the other customs frontiers of the State concerned, and all facilities accorded by the High Contracting Parties over other land or water routes, or in other ports, for imports and exports, shall be equally accorded to imports and exports on the international waterway and the ports referred to above.

An important amendment has been put in by the Roumanian Delegation. It reads as follows :

Use of Ports.

Subject to the provisions laid down in the present Convention, the subjects, property and flags of all the High Contracting Parties shall, as far as possible, and if the interests of the riparian States allow, enjoy equal treatment with the subjects of the riparian State itself, in all ports situated on an international waterway, particularly as regards port dues and charges.

(1) For report of Sub-Committee, see p. 167.

The equipment of ports situated on an international waterway shall be placed at the disposal of the public, and shall be available for public use in order of registration and as far as possible, without prejudice to the interests of the riparian State under whose sovereignty or administration these ports are situated.

Customs, octroi and other charges imposed by the riparian States on goods, during the process of loading or unloading in the ports or on the banks of an international river, shall be levied without discrimination and in such a manner as to avoid all hindrance to navigation.

M. POPESCO (Roumania; speaking in French). — The amendment to Article 8 proposed by the Roumanian Delegation contains three parts, each relating to a question dealt with in this article. The first refers to possible exceptions which may arise, and which would oblige a riparian State not to grant the same advantages in a national port to a foreign shipping company as to its national shipping. For example, if a foreign shipping company with a large capital were to carry on competition calculated to destroy the national navigation of a riparian State, would it be fair for this competition to be allowed, not only in foreign ports, but also in the ports of the country itself? In such a case, would not the riparian State be entitled to take protective measures to defend itself against such competition by granting facilities to its national shipping? Equity would require an affirmative answer, because ports are usually national centres built at the cost of sacrifice on the part of citizens of the country whose national navigation is in competition with the foreign company. For this reason, we have said in our amendment that equality of treatment between foreigners and nationals in ports shall be granted as far as possible, and if the interests of the riparian States allow. We contemplate exceptions to meet cases such as that which I have mentioned.

The second paragraph of the amendment refers to a practical question,—the utilisation of port equipment in order of registration, in order to obviate possible complaints by providing exceptions in cases where the greater interests of a riparian State call for preferential measures, which would not be guaranteed by the word *reasonable*.

Finally, as regards the last paragraph, which refers to customs, octroi and other charges, the Roumanian Delegation desires to make it clear that our Convention cannot touch upon questions of an internal economic nature in respect of the import and export of goods. It is obvious—and, indeed, generally understood—that no State will place obstacles in the way of navigation, and that every facility will be afforded; but when once goods have been unloaded for importation into a country, navigation ceases, and the owner of the goods has to deal with the authorities and laws of that country. The question of the treatment to be applied to such goods passes from the domain of navigation to enter into the fiscal domain of the country into which they have been imported, or into that of commercial treaties concluded by that country. Riparian States are entitled to demand that their freedom and economic policy, imposed by their own interests, should be respected. A State may be obliged to protect itself, by means of charges, against goods imported by a State which is waging an economic war against it. The Roumanian Delegation considers that a distinction should be drawn between goods conveyed in transit in a vessel and goods unloaded in the territory of a country. The former will enjoy freedom of transit; the latter will be subject to the fiscal system of the country. It was not the principle of absolute commercial equality which was laid down in the Covenant of the League of Nations, but the principle of equitable treatment for commerce. For these reasons, I propose to draft the last paragraph as follows :

Customs, octroi and other charges imposed by the riparian States on goods during the process of loading or unloading in the ports or on the banks of an international river, shall be levied without discrimination and in such a manner as to avoid all hindrance to navigation.

This article gave rise to long discussions during the Conference on the Danube Statute, and it was provisionally adopted in the same sense. In view of the fact that this question of the levying of customs and other charges relates rather to treaties of commerce and the internal fiscal policy of a country, the Roumanian Delegation would prefer to delete the paragraph altogether, as it is not in its proper place in a convention on navigation.

The CHAIRMAN (speaking in French). — There is a slight change in the Roumanian amendment. The text of the *Green Book* reads : ...*under the sovereignty and authority of which...*, and you say : ...*under the sovereignty and administration...*

M. POPESCO (Roumania; speaking in French). — We can keep the wording of the *Green Book*; the point is of no importance.

M. HOSTIE (speaking in French). — We are here touching upon one of the vital points of this Convention. The Roumanian amendment, which is complex in its details, is taken as a whole, the expression of an idea directly contrary to that upon which the wording of the Draft is based. The Roumanian Delegation places a narrow interpretation upon the idea of navigation, — an interpretation which restricts freedom of navigation to mere freedom of passage, whereas the fundamental idea of the Treaty of Vienna was to interpret freedom of navigation as the application of freedom of commerce to commerce by water. The Treaty of Vienna states : *The navigation... shall be entirely free, and shall not, in respect to Commerce, be prohibited to anyone...* That is to say—and it has always been understood and applied in this sense in navigation acts, particularly the Rhine Navigation Act—that in ports situated on an international waterway, flags, property and goods are to be treated on the same footing. It is added, of course, that the police regulations on these waterways should be fulfilled, as they will be made uniform for all, and will as far as possible favour the commerce of every nation. I lay stress upon the word *commerce*, because by linking this word with the word *uniformly*, the Treaty of Vienna clearly indicates that this uniformity must be applied to the treatment of persons and goods, in the same way as to the treatment of vessels.

The intention of the Roumanian amendment is to withdraw the elements comprised under *goods and persons*, and to consider the flag only. It is clear that in so far as goods and persons are included under a flag, it is the flag alone which can normally serve as a basis for discrimination. We are faced with two opposing ideas,—the traditional idea to which we have adhered and which we have clearly and categorically defined in the draft of the *Green Book*, and a different conception which would fundamentally change the scope of our work here.

I think that if the Conference were to enter upon the path marked out by the Roumanian Delegation, it would be taking a retrograde step as compared with what was adopted at Paris in Articles 332 to 338 of the Treaty of Versailles. These articles constitute, as the Secretary-General very truly observed, the starting-point for the General Convention. They state that *on the waterways declared to be international in the preceding article, the nationals, property and flags of all Powers shall be treated on a footing of perfect equality...* For this perfect equality we should substitute, if we adopt this amendment, the possibility of preferential treatment for the benefit of the commerce of a riparian State, and we should end by rendering this convention a mockery, as it is obvious that the Convention on Freedom of Transit is sufficient to ensure equality of treatment as regards the passage of vessels alone. This is therefore a fundamental question and calls for mature consideration.

M. WINIARSKI (Poland; speaking in French). — We ought perhaps to know whether any of the delegations is opposed to this conception.

M. REINHARDT (Austria; speaking in French). — If I interpret aright the text proposed by the Roumanian Delegate, the same treatment is to be applied to nationals of foreign States as to Roumanian subjects, and there can be no differentiation except when necessitated by the interests of the riparian State. Is not that what the Roumanian Delegate intends to convey?

M. POPESCO (Roumania; speaking in French). — Certainly it is.

M. REINHARDT (Austria; speaking in French). — If we compare this idea with the present situation as defined in the Conventions, we find that this proposal will be a retrograde step, and when we compare this text with that of the *Green Book* we find two

opposing points of view. Those who are endeavouring to extend the rights of freedom of navigation on waterways cannot consent to restrict,—as they would do were they to adopt this text,—the rights, the freedom, the equality laid down in the *Green Book*. It is my constant aim to increase these advantages as far as possible, and I could never accept the Roumanian Delegate's proposal. I propose the following amendment :

Insert between paragraphs 1 and 2 the following new paragraph : *it is similarly understood that the provisions above mentioned also apply to all the places intended for the embarkation or disembarkation of passengers and merchandise, provided that these places are neither private property nor leased by private persons.*

Add to the end of paragraph 3 the words *whether the goods should be carried by sea-going or river vessels, and whatever may be the direction of transport.*

Omit at the beginning of paragraph 4 the words from *in the absence of special circumstances* as far as the words *economic needs*.

M. SEELIGER (Germany; speaking in French). — If I understand aright the purport of the Roumanian amendment, we may say that, for the first time, the right of a riparian State comes into conflict with international common law on an international river. The idea which has inspired the Roumanian Delegate is the desire to safeguard the interests of the riparian State, and to allow the State to carry out whatever commercial policy it may think desirable. This is the most serious problem which has yet arisen in connection with the Convention which we are discussing, and it must be considered in all its aspects. We heard this theory propounded when we discussed the Danube Convention, and we shall be in a better position to view it later. It is the right of riparian States conflicting with the general rights enjoyed by other States on an international river. We can neither accept nor reject it,—we must find a middle way; the question must be settled in a spirit of conciliation and moderation. A State cannot, of course, be deprived of the right to safeguard its economic and commercial interests, but those interests must be considered in the light of the needs of navigation, and not from any other point of view. The rights of a riparian State must not be maintained if freedom of navigation on the international river suffers thereby. The Roumanian Delegate proposes to omit the words in the third paragraph which prohibit the levying of lower charges on goods entering by its land frontier than those entering the country through its river-ports. In other words, if a country levies a much higher due on the raw materials which it wishes to import when these materials enter through a river port, it will harm navigation, because it will become impossible to carry on traffic by waterway, and everyone will have to send imports by the land frontier, as the dues paid there would be much lower. If we consider this problem without taking into account the needs of navigation, we are hindering freedom of navigation; this is inadmissible and cannot be defended if we are to proclaim the principle of freedom of navigation. For my part,—and this, as you will remember, was my attitude at the Danube Conference,—I cannot support the proposal to omit this paragraph. The dues levied on goods must be equal. They must enter either by the land frontier or by river-ports.

I have only a few words to say on the other amendments proposed by the Roumanian Delegation. I note that this Delegation has made efforts, but with considerable restraint, to safeguard the interests of the country which it represents. It demands that treatment shall be equal as far as possible if the interests of the riparian States allow.

In the second paragraph it proposes to say : *...as far as possible without prejudice to the interests of the riparian States.*

I shall not express an opinion whether these proposals are acceptable or not. I will only say that this is for me a question of principle, that the provisions which you are laying down must not hinder navigation. If they do not do so, they may be inserted in the text; otherwise they must be omitted.

The CHAIRMAN (speaking in French). — The French Delegation has submitted the following amendments to Article 8 :

1. In paragraph 1 substitute *droits et redevances* for *droits et charges*. (Note,—this change does not affect the English text).

2. In the third paragraph, substitute for the words *All customs, local octroi or consumption duties* the words *All customs duties or analogous duties levied on imports...* (remainder of paragraph as in *Green Book*).

3. Substitute for the last paragraph the following text : *In the absence of special circumstances reasonably justifying an exception on account of economic needs, these duties may not be higher than those applied at the other customs frontiers of the State concerned, to goods of the same nature, place of departure or destination, and all facilities accorded by the High Contracting Parties over all land or water routes or in other ports for imports and exports, shall in the same conditions be equally accorded to imports and exports on the international waterway and the ports referred to above.*

M. DETOEUF (France; speaking in French). — As the rights of riparians on international rivers should obviously be respected and safeguarded as far as possible, the question of the use of ports in connection with the regime of rivers is an essential factor in the navigation of the river. Generally speaking, it is difficult to carry on commerce from end to end of a river without stopping at various places; rivers cannot be navigated like the sea. As has already been said, the question now before the Committee is one of the most important on which it can be called to give a verdict. If equality between riparian and non-riparian States and between Contracting Parties generally is not assured as regards the use of ports, the internationalisation of rivers will be no more than an empty phrase. This is one of the points on which the French Delegation has submitted an amendment.

I will go further. The Convention which we are drawing up should constitute a minimum statute beyond which it should always be possible to go in the direction of granting facilities to all. I am therefore of opinion, as the French Delegation has proposed in its amendment, that we should lay down that duties levied on imports and exports on navigable waterways need not necessarily be equal to those levied on the other frontiers; they shall at most be equal to them, and cannot exceed them.

I also wish to draw the attention of the Committee to the fact that in Article 6, which was considered somewhat cursorily yesterday, it would be well to introduce similar wording in respect of duties levied for the upkeep and improvement of rivers.

M. PHOCAS (Greece; speaking in French). — The Greek Delegation cannot second the amendment submitted by the Roumanian Delegation.

I have very little to add to the arguments advanced by M. Hostie and M. Detœuf, but I should like to point out to the Committee that if it accepts this amendment, it will, by so doing, ensure only freedom of passage on international rivers. But international rivers are not navigated for the sole pleasure of admiring their banks, whether they are the banks of the blue Danube or of the Rhine; they are navigated chiefly for purposes of commerce, and for this their ports must be entered. If equality of treatment is not assured in the ports, navigation will be monopolised by the riparian State. The amendment submitted by the Roumanian Delegation only contains restrictions for non-riparian States. Thus in the first paragraph we read that port dues and charges shall be equal *as far as possible*; in the second the equipment of ports shall be placed at the disposal of all, but *as far as possible without prejudice to the interests of the riparian State*; in the third, *customs, octroi and other charges imposed by the riparian States on goods during the process of loading or unloading* shall be equal, but different from those levied at the land frontiers of the country.

This is a totally different system from that which at present exists even in seaports. In Greece, for example, there are no differential tariffs in ports. The dues levied are the same for national as for foreign vessels. The Greek Delegation therefore cannot support the amendment submitted by the Roumanian Delegation.

M. TSANG-OU (China; speaking in French). — The Chinese Delegation foresees great difficulties in the application of the third and fourth paragraphs of the article. They both deal with questions of customs in connection with imports and exports. The fourth paragraph calls for equality between customs dues paid on land frontiers and those levied on maritime or river frontiers. As China is bound by treaties with certain States, her regimes are of very different kinds. She has a customs regime for her land frontiers with Russia which is quite different from that between China and

England on the coast of Burma. Again, whilst she has treaties with certain neighbouring Powers, and there are other neighbouring States with which she has no treaties. The Chinese Delegation does not object to the insertion of these two paragraphs in the Convention, but it declares that whatever form they may be given it is difficult for China to accept them. I therefore propose the omission of the whole of the last paragraph, or at least the substitution of the words *in the absence of Conventions or Treaties either existing or to be concluded* for the words *in the absence of special circumstances reasonably justifying an exception*.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The question raised by the Chinese Delegation in connection with this article appears to be of the same kind as that raised by that Delegation on the subject of the first articles (1). It had been agreed that the first articles should be considered as a whole, and that an amendment of the Indian Delegation should be considered at the same time, in order to ascertain in which cases there would be difficulties in adapting the Convention. It would seem that we must continue to employ this method in order to ascertain what are to be the principles of the Convention, and that, when the Convention is drawn up, we may see what particular difficulties may arise in adapting it.

The CHAIRMAN (speaking in French). — There may be regional, local or other difficulties.

M. TSANG-OU (China; speaking in French). — It is of these difficulties I wish to speak. In any case I should like my short statement to be entered in the Records.

M. HOSTIE (speaking in French). — For the sake of order and clearness in discussion, it would appear desirable to make a provisional reservation of the Austrian amendments, which, taken as a whole, supplement the Draft now before the Committee in the direction of still greater freedom. The discussion of these amendments must not be confused with the general discussion.

The French amendments are of a totally different kind. The French proposal remains within the limits of the work prepared at Paris; it is confined to improvements in matters of detail. The Conference might at once consider the possibility of substituting the French texts, subject to an examination of their details and wording, for the text of the *Green Book*, and of embodying the French amendments in the text. But I should like to ask the French Delegation whether its text is not slightly inaccurate as regards the words *to goods of the same nature, place of departure or destination*... M. Lely has made it clear, and we are all agreed on the fact that States should preserve complete freedom as regards tariffs, and that nothing that we do here should deprive them, either directly or indirectly, of the right of according differential treatment for goods of different origin. I ask our Brazilian friends to allow me to take their country as a concrete example. I will suppose that Brazilian goods arrive in Belgium by an international waterway. Under the terms of this Convention, does Belgium retain the right to treat Brazilian goods more or less favourably than goods from another country? We are all agreed upon this point. Similarly, if Belgium decided to establish export duties, she would have to treat goods destined for consumption in Brazil in a different manner from goods destined for another country. But I wonder whether the words *place of departure or place of destination* adequately express this idea, and whether it would not be better to say *of the same commercial origin, place of departure or destination*. From the point of view of customs tariffs, the essential point is and should be the commercial origin of goods.

M. BARRAIL (France; speaking in French). — From the point of view of customs, the place of origin is different from the place of departure. Goods of Brazilian origin might quite easily be landed in Portugal and then proceed from Portugal to Belgium. The place of origin of the goods is Brazil, the place of departure is Portugal. From the customs point of view, there is always a risk of fraud in transit ports, and both

(1) See p. 101.

the origin and place of departure of the goods have to be taken into account. In that part of the amendment referred to by M. Hostie, the meaning is rendered by means of the comma placed between the word *nature* and the words *place of departure*. If a distinction is drawn between imports and exports, we ought to say *to goods of the same nature and from the same place of departure and to goods of the same nature and with the same destination*. The difficulty is obviated by repeating the word *nature*, and a distinction is made between imports and exports. From the French point of view the text is quite intelligible in its present form, but it might thus be rendered even more accurate.

M. HOSTIE (speaking in French). — In order to simplify the discussion, and with the consent of the French Delegation, it would be better to reserve the question of putting *commercial origin and place of departure* or *place of departure* only.

The CHAIRMAN (speaking in French). — The question is temporarily reserved. We must know which of the two texts, the Roumanian or the French, should be taken as basis for this discussion. The French text is an improvement on the text of the *Green Book*; the Roumanian text is diametrically opposed to the *Green Book*. It is for the Committee to choose.

M. POPESCO (Roumania; speaking in French). — What we ask is that we should be allowed the means of defending ourselves against foreign competition in our own ports. No-one can reproach Roumania with not being a lover of freedom. She has sacrificed all in the cause of freedom and in the struggle against any supremacy or monopolies on the Danube. That was in the past, but my fear is for the future. In the past, shipping companies tried to deprive us of a living in our own country by carrying on destructive competition. It was impossible for us to have shipping of our own. We therefore desire to protect ourselves against exceptional circumstances. How can we accord similar treatment to our own shipping and to a foreign company which declares an economic war on us? We can protect ourselves by a duty on imports, for example. Dr. Seeliger tells us that he heard this claim discussed at the Danube Conference in Paris. We heard Dr. Seeliger advancing the same claim at Paris as here, but at Paris we were fortunate, because we were admitted to be right, and the arguments which we put forward were appreciated at their true value. We showed that it was impossible for us to allow anyone to interfere with our internal economic policy. I repeat that what we ask is to be given the means to protect ourselves in exceptional circumstances.

M. SEELIGER (Germany; speaking in French). — As M. Popesco has said, differential treatment as regards land frontiers was abolished in the first reading at Paris. I should like to draw the attention of the meeting to what M. Hostie has said. This provision does exist in the Convention of the Rhine,—the Mannheim Convention. In the first draft of the Elbe Act, which has been completed, we accepted it. It was particularly stated that import and export duties on goods in ports situated on its waterways must not be higher than those levied on the same goods entering or leaving by another frontier. The Act which contains this provision has been in force for fifty years.

M. POPESCO (Roumania; speaking in French). — At Paris the special statute of the Danube was discussed.

M. HOSTIE (speaking in French). — On this point formal reservations were made at the Danube Conference, and that draft cannot be cited as a precedent. It was only a text taken in first reading, and it was decided during the discussion that the question could be settled in the General Convention itself. It would therefore be begging the question to cite the text of the first reading of the Danube Convention.

M. POPESCO (Roumania; speaking in French). — The Roumanian Delegation declared at Paris that it could not accept a Convention containing terms which allowed interference with its internal fiscal policy, and I repeat this declaration now.

M. REINHARDT (Austria; speaking in French). — We have before us two texts. With a view to conciliation, and in order to hasten our work, I should be willing to agree that my first amendment, which only concerns the situation of the Danube, should be mentioned in the Final Protocol. Conditions on the Danube and its tributaries are somewhat different from those on other rivers. Loading and unloading are often carried out at places other than ports. As we all naturally intend to apply to these unloading-places whatever provisions apply to ports, I proposed to indicate this in the text; but if it appeared in the Final Protocol, I should be willing to withdraw my proposal. Similarly, in view of the text of the French Delegation, I am prepared to shorten the discussion by withdrawing both my other amendments; there would then remain only the Roumanian and French amendments.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In the general discussion one Delegation very truly remarked (1) that it would be regrettable if we were to divide into two parties on this question, some adopting methods of penetration, others endeavouring to protect themselves against this. The question of freedom of navigation must certainly not be confused with that of freedom of commerce. The German Delegate, who has a thorough knowledge of his subject, has spoken ably, but he will allow me to say that he has not dealt with the question in its true light,—he has substituted freedom of commerce for freedom of navigation.

I am quite willing to accept the claim of the Roumanian Delegate, but I affirm that it is not the Danube alone which must now be considered,—it is a world principle. Every delegation must think of that. M. Seeliger says that freedom of navigation must not be hindered; but no-one is thinking of hindering it. What we ask is to be allowed to remain masters of our own economic policy. The Roumanian Delegate used the word *protect*, but this is not correct. We wish, not to protect ourselves, but to remain masters in our own house. Everybody may come into our country, and all will be received alike; all may use our ports, but economic questions regarding prices must not be interfered with. M. Hostie has reminded us of the famous Final Act of Vienna, which, however, has never been put into practice. It has only given rise to quarrels, in which some parties have momentarily overcome other and weaker parties. They have defended themselves by other means, in other conferences. There have been some results, but they should not be extended to apply the world over.

The question of Articles 331 and 338 has also been raised. I should have preferred these not to be mentioned; but since this has been done, I must point out that Article 338 of the Treaty states that its terms shall be replaced by a General Convention. This is stated in Articles 332 to 337. It obviously does not mean that the General Convention which is to be drawn up may not be based on the ideas contained in the Treaty of Peace, but it must not be thought that everything contained in those articles must be incorporated in the Convention.

The Delegate of Greece has said—and I congratulate him on his plain speaking—that we do not want navigation for pleasure, but for trade. We do not wish to debar ourselves from carrying on trade; you cannot compel us to change our economic policy simply by a Convention. Moreover, I think that he was mistaken when he said that all goods were treated equally in all Greek ports, for his colleague, in another committee, told us that the ports of Volo and the Piræus did not apply the same tariffs (2).

M. PHOCAS (Greece; speaking in French). — My colleague stated that at Volo unloading cost more than at Piræus, but that prices were the same for foreigners as for nationals. There is no differential treatment.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I thank you, and in conclusion I should like to ask the Conference to consider the Roumanian proposal, which certainly has the support of other delegations, although they may not have not spoken in the discussion.

(1) British Delegate's speech, p. 37.

(2) See *Verbatim Records and Texts relating to the Convention on freedom of Transit*, p. 72 and 73.

Mr. H. O. MANCE (Great Britain). — I think it is time we considered this matter from a very general point of view without reference to too many "previous papers". We are here to conclude a Convention on freedom of communications, in accordance with Article 23 of the Covenant. We began in Article 2 by saying that the High Contracting Parties are to accord the free practice of navigation. In order to avoid discrimination, which of course would interfere with the free practice of navigation, we prescribed equality of treatment in Article 3. That is another safeguard. In Article 5 we have to safeguard certain sovereign rights and powers of the riparian States. We have done that, but in such a form as to prevent discrimination and to ensure that these powers are not utilised in order to impede navigation and render null and void the freedom of navigation which we desire to obtain. That is another safeguard. In Article 6 we speak of charges,—another method by which freedom of navigation might be rendered nugatory. We prescribed certain precautions,—that charges should be reasonable and should be levied equally on all concerned. What now remains in order to make certain that this freedom of navigation shall be established? There are two other articles; one deals with the question of the use of ports, and the other with that of maintaining the navigability of a river. If we remained silent as regards the use of ports, should we be perfectly certain of having established freedom of navigation? I take in reply the declaration of the Roumanian Delegate as I understood it. He says, "We desire to obtain the power of discriminating against foreign shipping which competes with our own",—perhaps he would even say, "competes unfairly with our own." Where is then our freedom of navigation? This shows the necessity of establishing equality of treatment in ports, in order to assure freedom of navigation. I put the following point to the Conference :—in view of the arguments advanced, and the explanations given in the *Green Book*, does the Committee consider it absolutely essential to assure this equality of treatment in ports? I think we have very nearly approached the point when we might vote on the question.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French).— Has the Roumanian Delegation in mind a case in which a campaign is directed against a country by a shipping company, or by a single ship-owner?

M. POPESCO (Roumania, speaking in French). — By a shipping company.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Then I wish to make a reservation regarding this paragraph. We cannot deny a country the right to take measures against a company or ship-owner when such measures are the instruments of a policy.

The CHAIRMAN (speaking in French). — The question is whether the Committee approves in principle the view of the Roumanian Delegation as expressed in article form. I will put the Roumanian amendment to the vote.

For : 9 votes (Serbia, Roumania, Sweden, Portugal, Poland, Bulgaria, Italy, Lithuania, China).

Against : 17 votes (Norway, Panama, Paraguay, Netherlands, Persia, Japan, Greece, France, Great Britain, Spain, Czecho-Slovakia, Denmark, Chile, Austria, Belgium, Brazil, Albania).

The amendment was rejected.

M. SEELIGER (Germany; speaking in French). — I would ask the Chairman to be so good as to note in the records that Germany, although not entitled to vote, agrees with the majority.

M. MONTARROYOS (Brazil; speaking in French). — I should like to explain the reason for my vote. The Roumanian Delegation refers principally to national navi-

gation. Although I favoured this view, I voted against the Roumanian proposal for the following reasons :—

As we desire freedom for international navigation, we should like an equal use of ports for all,—in other words, international navigation should be treated as national navigation. If a system of treatment is accorded in any port to nationals, it must also be accorded to all flags. Immediately the domain of international navigation is entered, the use of ports must be subject to the same rules. But how are we to protect our national shipping? We shall do so later when we deal with navigation between the ports of one and the same country,—that is to say, local transport. In order to protect national shipping we shall not allow vessels of foreign countries to take part in local transport traffic. In a word, we allow for international navigation a general system common for all and equal for all ; but as regards trade between the ports of one and the same country, we admit a national regime, and we do not allow foreign vessels to carry on local transport. I think that on this point a difference will have to be made.

M. ALVAREZ (Chile; speaking in French). — The amendment of the Roumanian Delegation has some connection with Article 9, which is one of the fundamental provisions of the Draft Convention. Perhaps we may have partially to alter Article 8 in order to bring it into accord with Article 9. For this reason I voted against the Roumanian proposal, whilst at the same time I wish to state that my final vote will depend upon the final terms of Article 9.

The CHAIRMAN (speaking in French). — Our decision is not final. The Report which will be presented to the Conference will state the facts.

M. TSANG-OU (China; speaking in French). — I voted for the Roumanian amendment, but if the Conference accepts the Roumanian proposal *in toto* I should like to point out that difficulties will arise on account of treaties.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I will submit to the Committee a counter-proposal in the form of an addition to the third paragraph of the article. I propose to add the words *except in cases where a shipping company or a ship-owner adduces reasons for the application of measures with a view to the protection of the economic interests of the country.*

M. VALLOTTON (Switzerland; speaking in French). — I should like to give the reasons for my abstention. I abstained for reasons very similar to those contained in the proposal of the Uruguayan Delegation. It is an echo of the important proposal formulated by the Brazilian Delegation on the subject of Article 2 of the Convention on Freedom of Transit (1). My view is that equality must really not be made a pretext for States which benefit by that equality to secure an artificial superiority *to the detriment* of the countries whose hospitality they may enjoy. At Paris I voted with the majority, but I am not insensible to the argument put forward by the Roumanian and Serbian Delegations, and I think that if we wish to arrive at unanimous agreement on this point and on the Convention as a whole, we must find a formula which will provide a safety-valve. We must not allow a country which benefits by the equipment of another *to take advantage* of equality of treatment in order to crush its host.

The CHAIRMAN (speaking in French). — I will read the amendment proposed by M. Fernandez y Medina :—*except in cases where a shipping company or a ship-owner adduces reasons for the application of measures with a view to the protection of the economic interests of the country.*

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Countries must reserve the right to apply different treatment when they are faced by any group of companies or ship-owners. It has been said that countries can always in self-defence

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 58.

use import duties or any other measures. But in the case of a shipping company, is the flag enough to prevent this company from being subjected to different treatment? I think not. Countries must always have the right to impose on any company or ship-owner measures directed against a campaign which would be detrimental to its own interests. That is my view.

M. HOSTIE (speaking in French). — I should like to ask M. Fernandez y Medina for a few words of explanation. For the moment we are not dealing with questions of wording. Does he think that his amendment deals with the case in which a ship-owner or shipping company systematically discriminates against the nationals of any country? If this is so, this conception is entirely in accordance with that on which the Draft was based. If, on the other hand, a country is allowed to discriminate to the prejudice of a foreign ship-owner simply because the ship-owner—through fair competition, but owing to the fact that he is a better business man—can offer more advantageous rates, we should, I think, be acting counter to the ideas upon which our Draft is founded.

M. MONTARROYOS (Brazil; speaking in French). — After M. Vallotton's speech I must supplement my explanation. I should like to say that the Brazilian Delegation does not consider it opportune to raise the question of the equitable treatment for commerce referred to in Article 23. I shall speak when the time comes.

M. DETOEUF (France; speaking in French). — I heard the Serbian Delegate say that the proposal which resulted from the *Green Book*, whether modified by the French amendment or not, would have the effect of interfering with the economic policy of the States concerned. If this were so, the French Delegation would certainly not associate itself with the proposal, but there is no question of interfering with the economic policy of the States concerned. It is simply a question of ensuring that in river-ports, as in seaports—and this is more essential in river-ports than in seaports—equality of treatment should be granted for all. This in no way affects any treaties which may have been concluded.

The *Green Book* states that customs duties must be the same on all frontiers. We on our part ask that they shall not be higher on water frontiers than on land frontiers. We simply desire that the use of a waterway should not be discouraged in favour of other routes, and that on waterways non-riparian States should be afforded the opportunity of using the ports, as in practice they are everywhere afforded the opportunity of utilising seaports, on the same footing as nationals. It is understood that the whole question of local transport is reserved and does not enter into the present discussion.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I thank the French Delegate for the explanation he has given us; but there was another point in the Roumanian proposal. We have not the slightest wish to hinder freedom of navigation or navigability.

M. PIERRARD (Belgium; speaking in French). — The reason for which I oppose the amendment of M. Fernandez y Medina is simple. No distinction can possibly be drawn between a flag and the various shipping companies under that flag. If discrimination is made as regards a shipping company, it may be done also as regards all the shipping companies belonging to one flag, and that would be to take away with one hand what is given with the other. For this reason the Belgian Delegation cannot support the amendment of the Delegate of Uruguay.

The CHAIRMAN (speaking in French). — I think that the position of Article 8 as a whole should be determined at the end of this meeting. We have not been able to arrive at an agreement. I think the best course would be to refer the article to the consideration of the Sub-Committee which is dealing with Article 1, and which could rub off its corners.

M. MULLER (Czecho-Slovakia; speaking in French). — The Czecho-Slovak Delegation is disposed to accept the French amendment, but I should like first of all to know the meaning of the words *facilities*.

M. DETOEUF (France; speaking in French). — We mean by that the possibility of warehousing. It is a customs question, but *facilities* means in a general way the manner in which goods are treated. From a customs point of view the only action which should be taken in respect of goods consists in the levying of customs duties upon them. That is what is meant by the word *facilities*.

M. MULLER (Czecho-Slovakia; speaking in French). — What is the meaning of the words of the same nature, in the same conditions and with the same destination?

M. BARRAIL (France; speaking in French). — It means that importation and exportation are carried on under the same conditions for goods of the same nature arriving or leaving.

M. DETOEUF (France; speaking in French). — In other words, the same treatment must be established in all respects for goods arriving by international waterways as for goods arriving by any other route, and even—if the riparian States think fit, or if a navigation act so decrees—more favourable treatment.

M. VALLOTTON (Switzerland; speaking in French). — I should like to conclude this discussion of the expression *facilités de navigation* by asking you to glance at the Convention as a whole. You will note that this expression is used with different meanings. I hope M. Haas will not object if I do not appear as a champion of the *Green Book* on this point. This expression has even less meaning than the word *raisonnable*. It means nothing at all. In Article 9 it appears to have a different meaning from that which M. Detœuf is now attributing to it. I therefore beg the Drafting Committee to rid us of this expression and to substitute for it a real French one. It is derived from an English word and has no meaning in French.

M. DETOEUF (France; speaking in French). — In this article the expression means *customs treatment*, and in Article 9 *navigability*.

The CHAIRMAN (speaking in French). — In view of these remarks we may refer the text for consideration to the Drafting Committee.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — We must take care; the Drafting Committee is only empowered to make drafting amendments. If it is desired to ascertain the meaning of a text, the Committee must take the initiative.

M. VALLOTTON (Switzerland; speaking in French). — I agree. But I should like to ban the use of this unfortunate expression *facilités de navigation*.

Mr. H. O. MANCE (Great Britain). — I think we should keep this article before us without sending it for the moment to any outside body, because, after all, we have already voted on the principle. We desired to ascertain the opinions of the delegates, and I think that, that has done a great deal of good. I am of opinion, however, that we should keep the article before us, because it has been said that it may need to be reviewed after we have dealt with Article 9. I suggest that if we were to adopt it provisionally it might help us later.

M. HOSTIE (speaking in French). — It is essential to safeguard the laborious and important work which has been accomplished during this meeting. The French amendments constitute a decided and obvious improvement on our text, and we might adopt them, as we adopt all texts, subject to drafting amendments. Does General Mance object to that?

Mr. H. O. MANCE (Great Britain). — No.

M. HOSTIE (speaking in French). — As regards the phrase *facilités de navigation* in particular, I should like to point out to M. Vallotton that in the Commentary itself the possibility of misunderstanding was noted, and it is carefully stated that the word *facilité* is used here in a restricted sense, whereas in Article 17 its meaning is quite general. We can therefore confidently rely on the Drafting Committee, subject to the observations which have been made here.

M. VALLOTTON (Switzerland; speaking in French). — I did no more than voice the anxiety expressed by certain members of the Committee; it appeared to me well founded. M. Detœuf proposes to use an expression which is quite clear,—*customs treatment*. Let us adopt it.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — There are a certain number of points in the French proposal which caused me uneasiness. M. Hostie considers that this proposal is an improvement on the text of the *Green Book*. This is possible, perhaps, from the point of view of certain delegations, but I do not think it is so for all. Do not let us hasten unduly. Article 8 speaks of imports, exports, transit, customs, and so on, whereas the title would lead us to suppose that the article only refers to the use of ports. Before we vote, some light should be thrown on the results of this discussion. If we voted now, we should incur the risk of our vote having, so to speak, a doubly provisional character.

M. DETŒUF (France; speaking in French). — In view of M. Avramovitch's remarks I think that the conclusion of the discussion of Article 8 should be left until the next meeting. We have too little time at our disposal this evening to bring the discussion to a successful conclusion.

M. VALLOTTON (Switzerland; speaking in French). — The authors of the amendments might meet and prepare a fresh text, taking into consideration the observations made this afternoon.

The CHAIRMAN (speaking in French). — It seemed to me that the situation had become less obscure, and that the Committee had taken up a definite position.

M. DETŒUF (France; speaking in French). — It is not a question of discussing the principle of Article 8, but of settling the details of the wording of the French amendment. As the observations on this point appear to have raised questions of principle, it seems to me that, if we are not to appear to be unduly hastening the discussion, it must be continued at the next meeting.

Mr. H. O. MANCE (Great Britain). — The Committee has merely rejected the principle contained in the Roumanian amendment. I think that if a sub-committee were appointed and drafted this article it would be rendering us a real service. After having considered the text of the French amendment, it could draw up a text on which we might give our opinion at the beginning of the next meeting.

M. BARRAIL (France; speaking in French). — May I remind the Committee that it has already formed a Sub-Committee to re-draft Article 7? I am on this Sub-Committee, and the Committee will excuse me if I ask for this extra work to be given to it. I propose to entrust this Sub-Committee with the task of drawing up a final text for Article 8, taking into consideration both the French amendments and the observations of the various speakers. As the Serbian Delegate has said, Article 8 is of a comprehensive nature, but I would like to point out that it has four paragraphs. The first two deal with the use of ports; the second two deal with customs dues, because as a rule customs dues are levied in ports.

If you will allow me, I should like, in order to satisfy the Swiss Delegate, to remind him that in customs affairs the word *facilité* is in daily use. In giving an order for a

frontier customs station the following words are often used :—I beg that all customs facilities compatible with the regulations may be granted to....., and so on. If you add *douanier* (customs) to the word *facilité* in order to define its meaning, there can be no possibility of misunderstanding. It is therefore needless to use the phrase *customs treatment*. If M. Vallotton agrees, the Sub-Committee might consider this text and submit it to us again next Monday.

M. VALLOTTON (Switzerland; speaking in French). — I entirely agree with you on that point.

M. HAAS (Secretary-General of the Conference; speaking in French). — As regards the text of Article 8, the drafting difficulty raised by M. Vallotton appears to be settled. We have still to consider the amendment of M. Fernandez y Medina. In order that the Committee should have before it a definite text at the beginning of the Monday afternoon meeting, would it not be enough, therefore, if unofficial and friendly conversations were held on Monday morning ? This method would have the advantage of not overburdening the Sub-Committee which is dealing with Article 7.

The CHAIRMAN (speaking in French). — It seems needless to have recourse to the Sub-Committee, and I ask the delegates concerned in this matter to be so good as to hold an unofficial and friendly meeting on Monday morning, in order to come to an agreement and submit to us a text which I hope will be final.

The meeting adjourned at 8 p.m.

SEVENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Monday, April 4th, 1924, at 3.30 p.m.)

REPORT OF COMMITTEE ON ARTICLE 8 — DISCUSSION OF ARTICLE 9 — DISCUSSION OF ARTICLE 10
— PROPOSAL BY INTERNATIONAL LABOUR OFFICE — APPOINTMENT OF RAPPORTEUR ON
QUESTION OF NAVIGABLE WATERWAYS.

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

REPORT OF COMMITTEE ON ARTICLE 8

Mr. H. O. MANCE (Great Britain). — The Sub-Committee on Article 7 has not quite completed its work, and in view of the great importance of beginning the discussion of Article 9 as an aid to the Sub-Committee on Article 1, I am of opinion although I am authorised by the Sub-Committee to explain the agreement arrived at on all of the points except one in Article 7—that we ought to take the sense of the Committee as to whether we should not begin the discussion of Article 9. It is most important to obtain some idea as to the final form of this article; it might even be referred to the Sub-Committee on Article 1. I suggest, therefore, that we begin by discussing Article 9, and deal later with the Report on Articles 7 and 8.

M. BARRAIL (France; speaking in French). — I entirely agree with General Mance as regards Article 7, but I think we should save time if we voted on Article 8, on which almost unanimous agreement has been reached,—a passing comment regarding a matter of detail was made by General Mance. With the Chairman's permission I will first read Article 8 in the form in which it has issued from our Sub-Committee, and will inform you of the comments which were made. If the Committee can come to a definite decision on this article, it would shorten the discussion.

ARTICLE 8

Use of Ports.

1. As regards the use of all the ports situated on a navigable waterway of international concern, and subject to the provisions of Articles 4, 14 and 16, the subjects, property and flags of all the High Contracting Parties shall enjoy equal treatment with the subjects, property and flag of the riparian State under whose sovereignty or authority the port is situated, particularly as regards port dues and charges; it being understood that the goods to which the present paragraph shall apply are those originating in, or proceeding from or to, the territory of one of the High Contracting Parties.

2. The equipment of ports situated on a navigable waterway of international concern, and the facilities granted to navigation in these ports, shall be available for public use to such reasonable degree as corresponds with the free and effective practice of navigation.

3. For the application of customs or similar duties levied on imports and exports through the said ports, no difference shall be made by reason of the flag flown by the vessel carrying, or to carry, the goods, whether it be national or belonging to any one of the High Contracting Parties.

4. The preceding paragraph shall cease to be applicable in respect of the vessels of a foreign company which systematically discriminates against the nationals of the State under the sovereignty or authority of which the port is placed.

5. In the absence of special circumstances which would adequately justify an exception from this provision, on account of economic necessity, these dues must not exceed those which are levied on the other frontiers of the State concerned, on goods imported and exported under the general conditions of the legislation of this State. All the facilities which may be accorded, by the High Contracting Parties, on other land or water routes, or in other ports, for the imports and exports of goods, shall be equally accorded to imports and exports under the same conditions by the navigable waterway and the ports referred to above.

That is Article 8. The eight or ten persons who have just met are in absolute agreement as regards four of these paragraphs. I think that they have taken into account all the observations made at the meeting on Saturday afternoon, and we shall therefore have no difficulty in voting on these four paragraphs.

There remains paragraph 4, which satisfies the Roumanian and Serbian Delegations. These Delegations desire to safeguard the economic interests of any country menaced by systematically unfair methods on the part of a foreign shipping firm. On this point the British Delegate, General Mance, reminded us that an amendment based upon the same idea, but applicable to a totally different subject, was submitted by the Brazilian Delegation during the discussion of the Transit Convention. He considered that the question might finally be solved if it were considered as a whole, with the intention of reconciling the views of the Committee to which we belong with those of the Subcommittee appointed by the Transit Committee to study the Brazilian amendment. It is of course for the present Committee to decide upon this point, because I think, as was said just now, that paragraph 4 completely satisfies all the delegations, in view of the fact that we are dealing mainly with systematically unfair methods which no one can defend, and which should therefore be abolished in order to safeguard the economic interests of all the nations represented here.

The CHAIRMAN (speaking in French). — If there is no objection we will consider this article as adopted, except paragraph 4, which is reserved, and as General Mance recommends, we will pass to the discussion of Article 9 (1).

DISCUSSION OF ARTICLE 9

We will now discuss Article 9, which reads as follows :—

ARTICLE 9

Works for Upkeep and Improvement.

In default of any special organisation or agreements for the upkeep and improvement of an international waterway, each of the riparian States is bound to abstain from any action likely to impede navigation, and also to take suitable measures to remove any obstructions and dangers to navigation, and to carry out the works necessary for the upkeep of the waterway, or to permit their execution subject to an allocation of expenses between the States concerned, proportionate to their respective interest in the said works.

Should the States making the demand offer to defray the cost, each riparian State is likewise bound, in the same conditions, and in the absence of valid reasons to the contrary, based on interests other than those of navigation, such as in particular the maintenance of the normal hydraulic conditions, the needs of irrigation or of utilisation of hydraulic power, to carry out or cause to be carried out any works for the improvement of the waterway.

The stipulations of this article may not be invoked against a riparian State in any case in which such State can prove that it is acting or has acted with the unanimous consent of all States riparians of the international waterway, or represented on the International Commission for this waterway, if one exists.

M. ALVAREZ (Chile; speaking in French). — With the provisions of Articles 9 and 10 we enter into the very heart of the problem of free navigation on international rivers. And to-day the truth of what I had the honour of telling you some days ago, when we were discussing Article 1 of the Draft, appears in its full light. We shall make little progress with the definition of international rivers if we do not at the same time establish a classification of these rivers with a view to determining the regime to which they are to be subjected, and especially the rights and duties of riparian States. In

(1) For adoption of this paragraph, See p. 173.

the brief statement which I then submitted to you, I laid stress on the essential differences which exist in every respect between the rivers of Europe and those of Latin America. The effect of these differences is that, whereas European rivers are of primary importance as routes of communication and commercial arteries of a truly universal character, the rivers of Latin America do not form easy routes of communication, nor are they commercial arteries of primary importance. They only concern a limited number of States,—the riparians. And I drew the conclusion that if a similar principle of freedom of navigation were to be applied to all rivers, it would not be the same in respect of the regime of these rivers. A threefold distinction would have to be made.

Unfortunately Article 9 of the Draft submitted to us for consideration does not take these essential differences into account. The provisions of this article are quite suitable and desirable for the great rivers of Europe, but they cannot be accepted for those of Latin America. Let us take a single instance,—that of the works to be carried out to facilitate navigation. On most rivers of Latin America such works are almost impossible of execution; in any case this could only be done at enormous expense and after many years. The States concerned in navigation, which desire to make use of the powers conferred under Article 9 in order to carry out the works themselves, would be obliged to occupy a considerable portion of the banks of these rivers and to erect great installations, to provide shelter for thousands of workmen and to arrange for all the necessary adjuncts of such undertakings. Police and many other necessary services, indispensable for the carrying out of such works, would have to be organised. These enormous undertakings may be compared with those carried out by the United States in building the Panama Canal. I am not exaggerating when I tell you that in many instances it would be necessary in the first place literally to colonise the region before beginning the work. Do you think, therefore, that it is either possible or desirable to impose on the riparian States of these rivers the obligation to bear such a burden, without their consent, and also without their possessing effective means of control? This would ensue were Article 9 to be applied in all its rigour. There is no need to press the point further. What I have said of the work to be done to facilitate navigation also applies to many other questions. Article 9 of the Draft must therefore be amended in such a way as to give complete satisfaction to all the States of the New World.

Allow me to tell you once again that my country, Chile, is not specially concerned in river navigation; it is a country without navigable rivers, whether national or international, and all our trade is carried on by sea or rail. But if the Chilean Delegation is specially interested in the Convention which we are examining, it is because it desires continental solidarity. It is because this question is of great importance to our sister republics that we are thus raise our voice in support of it, without passion or prejudice, but merely in a spirit of justice and fraternity.

I also desire to say that the Latin American States have come to this Conference—as they have come to all other world-conferences—with the ardent desire to co-operate, in order that the bonds uniting all the countries of the world may be drawn ever closer, for they are essentially progressive countries which are inspired by a spirit of progress and justice. This spirit is derived from the twofold origin of which they are so proud,—our Mother-Country, Spain, and our intellectual Mother, France.

But, whilst the Latin-American States desire to continue to live on increasingly intimate terms with all the countries of the world, and especially with those of Europe, they wish a distinction to be made when necessary between the various *continents*; that is to say, they wish the special problems and conditions of each continent to be taken into consideration in all legal settlements. Full satisfaction has been given to this desire by the Barcelona Conference. After a long and interesting discussion on Article 10 of the Draft Convention on Freedom of Transit, the Conference has established the fundamental principle which consists in differentiating between *continents*, and even between *regions*, when circumstances so require. Only by drawing these distinctions can the foundations of co-operation between States be well and truly laid, because each continent can then put forth its utmost effort to reach the desired goal. It is from the combination of all these partial but harmonious acts of co-operation that true universal co-operation will result.

The new international law must not be built on a basis of rigid uniformity of laws,—it must be founded on distinctions—I say *distinctions* and not *opposition*—whether continental, regional or even national. Above all, the conditions, problems and doctrines of the New World must be brought into bold relief,—in a word, all that constitutes what is called *American international law*, a law which is not particularist, or in opposition to world international law, but which tends rather to present the latter in its true aspect. The need for this new development is imperative. There was founded recently at Paris, under the patronage of the great centres of science and of personalities from various countries of both continents, an *Institute for the Higher Study of International Law* or *International School of International Law*, which will be solemnly inaugurated at the end of this month by the President of the French Republic. It is from this new angle that the new School proposes to study international law.

In conclusion, I venture to point out once more that the present text of Article 9—a provision which lies at the root of the whole question—is not calculated to meet with the approval of the Latin States of the New World. It was with a view to changing this state of affairs that I submitted for your consideration the ideas which I expressed during the general discussion. The Chilean Delegation would be most happy if its efforts succeeded in throwing some light on the question of the rights and duties of riparian States on international rivers. I will conclude by proposing that, in view of its close connection with Article 1, this article be referred to the consideration of the same Sub-Committee, and that two other members, chosen from the States of Latin America, be added to this Sub-Committee.

M. VELASQUEZ (Paraguay; speaking in French).—I will not occupy the time of the Committee for more than a few moments. The reasons which lead me to submit my proposed amendments to Article 9 are practical ones which this Assembly will, I hope, easily appreciate. After conversations with several of my South American colleagues, I have drawn up these amendments as follows :

Delete in the first paragraph from the words : *and also to take... to the end* ;

Delete in the second paragraph the words *in the same conditions* ;

Delete in the second paragraph the words *should the States... defray the cost* and from the words *to carry out to the end*, and substitute for them the words : *to cause to be carried out without detriment to its sovereignty or its rights of control and administration all works for the improvement of the waterway, should other riparian States making the demand offer to defray the cost.*

The obligations imposed on riparian States by Article 9 in its present form—obligations which, I find, are still more clearly and precisely emphasised in the amendment proposed by the French Delegation—are, in my opinion, excessive, and I can assure you that their fulfilment is beyond the power of those countries of South America which, like my own, are surrounded or crossed from one end to the other by international waterways. Imagine to yourself hundreds and thousands of kilometres of river which must be supervised, maintained and improved by the riparian States, in order to fulfil the conditions imposed by the article which we are considering. It is of course in the interests of each country to make every effort to render accessible to navigation those waterways by which it establishes communication with the rest of the world, by which its commerce is carried on and by which it receives the most potent contributions to its prosperity and progress, and I can assure you that Paraguay has at all times devoted all her care and resources to the realisation of this ideal. But how can you expect Paraguay to undertake such extensive work when you remember that her population does not exceed one million for an area of 445 thousand square kilometres, and that she is, as I have said, surrounded on almost every side and traversed throughout her entire extent from north to south by international rivers ? As a distinguished Member of this Conference has already pointed out, countries in which such conditions exist—and there are many of them in America—cannot be expected to provide anything more than those means of transit and communications which in present circumstances lie within their power; and this so long as they cannot improve them through their own initiative and from their own resources. You will thus understand the risk entailed for a country whose conditions are as I have described, when it undertakes the engagements involved under Article 9. I for my part could

not undertake this in the name of my country, which is accustomed to fulfil to the utmost the international duties to which it has agreed. It has been said here more than once that we must enter the world of reality and consider all that is connected with our work from a practical point of view, in order to avoid drawing up a Convention which would not be accepted by our Governments or Parliaments; we must prepare a Convention which will command the acceptance of every State and which, when put into force, will satisfy and benefit every nation. I therefore beg you to extend your support to the amendments which I have the honour to submit to you. In order to render clearer the changes which I propose to introduce, I venture to read Article 9 as it would appear if these changes were introduced into it :—

ARTICLE 9

Works for Upkeep and Improvement.

In default of any special organisation or agreements for the upkeep and improvement of an international waterway, each of the riparian States is bound to abstain from any action likely to impede navigation.

Each riparian State is likewise bound, in the absence of valid reasons to the contrary based on interests other than those of navigation, such as, in particular, the maintenance of the normal hydraulic conditions, the needs of irrigation or the utilisation of hydraulic power, to cause to be carried out, without detriment to its sovereignty or its rights of control and administration, any works for the improvement of the waterway, should other riparian States making the demand offer to defray the cost.

The last paragraph would remain as drafted. We have before us one of those typical instances referred to by the representative of Chile, in which account will have to be taken of the possibilities and needs of the different continents or even of certain given regions. I fully realise that my amendments may be found somewhat too drastic, and I should like to say that I am quite prepared to accept a less radical version so long as it safeguards the principles which I have stated.

M. LELY (Netherlands; speaking in French) (1). — Next to Articles 2 and 3, Article 9 appears to me the most important in the Convention. This article regulates upkeep and improvement in such a way that any riparian State is bound in the first place to carry out all work necessary to the upkeep of the waterway. I have no objection to that, but the article also declares that every State is further bound to carry out all improvements whenever the States which call for them offer to bear the cost of the work. This goes too far. No sovereign State can be compelled, in the absence of any special organisation or special agreement, to carry out works of such magnitude as these, even if it is not to bear the cost, and this is above all impossible in a country such as ours, where the effect of works connected with waterways is in many respects so far-reaching that a question of this kind cannot possibly be decided in a general fashion in this Convention.

I am not forgetting that this obligation applies only in the absence of valid reasons to the contrary based on special interests, but the interests of navigation will not be admitted as valid reasons to the contrary. It is thought, apparently, that a State might refuse to carry out such works for fear of international competition. But there are also interests of another kind connected with navigation,—for example, works of improvement may have a prejudicial effect on the operations of part of the existing shipping. This appears somewhat contradictory, but is really quite possible. We have an example of it in our own country; the Waal, the principal branch of the Rhine, is now at least three metres deep at normal low water. This result has been attained by decreasing the width of the river by means of dykes. If these dykes were extended it would be possible to deepen the river still more, but on the other hand an excessive extension of the dykes would render the river too narrow, not only for steamers, but also for trains of boats in tow, and for sailing-vessels. This is an example—and not a mere theoretical one—where some of the shipping interests oppose improvements.

(1) The text of the amendment of the Netherlands Delegation reads as follows :

“Omit in Article 9, paragraph 1, the words : *or to permit their execution subject to an allocation of expenses between the States concerned, proportionate to their respective interests in the said works*, and word Article 9, paragraph 2, as follows : *The improvement of the waterway may be the subject of special Conventions.*”

My chief objection to the article is that a riparian State will be obliged to allow works to be carried out by another State, for purposes either of upkeep or improvement of the waterway. This obligation appears to me incompatible with the responsibility and sovereignty of a State. In a country such as ours, the carrying out of works on a waterway is not merely a question of expense, but also of responsibility; other interests are involved, such as the safety of dykes and the regulation of the water-flow. As regards the question of sovereignty, let us suppose, for example, that a State wishes to dredge or improve one of the branches of the Rhine in the Netherlands, and that this branch is at present used only for a trifling amount of navigation; the Netherlands would be so little concerned in this improvement that they would consider it needless. Would they have to allow any State to come into the Netherlands with its workmen, drainage materials, vessels and barges to take possession of the necessary territory,—without expropriation and regardless of the laws of the State? It seems to me that such action might be possible in a no-man's-land or in the desert, but that in an organised State it would not be compatible with the sovereignty of the State concerned if it were obliged to allow works of this kind to be carried out without its consent. This is a question of such importance from the point of view of the sovereignty of States, that, in the absence of instructions to the contrary from my Government, I shall be obliged to refrain from signing any Convention which contains an obligation on our State to allow another State the right to carry out works on its territory.

M. PLANAS SUAREZ (Venezuela; speaking in French). — Although I gave a very clear account of the policy of Venezuela as regards the rivers which exist in her territory, or cross it, I should like to state formally once more that Article 9 in its present form is unacceptable from every point of view. Its place must be taken by another or by several other articles.

The question with which Article 9 deals is of a fundamental nature, and cannot be made merely the subject of an explanation or of individual interpretations. It must be drafted anew, and the exact position of the riparian States of a river on which works of upkeep and improvement are to be carried out must be made perfectly clear. In the first place, the right of independence of States must be proclaimed, their sovereignty must be safeguarded and their administrative autonomy and economic life must in no way be interfered with. The scope of Article 9 is so wide, and I may say so dangerous, that if unrestricted freedom were allowed, all that is most dear to the existence of any people would gradually disappear,—independence, autonomy, freedom—qualities which are founded not on selfish utilitarianism, but on the eternally noble principle of right and of perfect equity. The strong can always be great and generous, because the weak ask for nothing more than respect for their independence and sovereignty, and for this reason we must not forget the old Latin saying *vigilantibus jura subveniunt non dormientibus*; that is to say, *the law helps those who guard their interests themselves and not those who neglect them*. After all, weakness is not a crime. The spirit of co-operation has extended over the whole world, and my country, which, together with all the States of Latin America, forms one single family of nations, has always been associated with these admirable ideas of liberty, justice and liberality, which have aided so materially in the development of the economic life of all peoples and the moral intercourse of nations.

But if a better and wider co-operation is to be attained, and if this co-operation is to be far-reaching, useful, continuous and progressive, we must, in my view, take into consideration the special circumstances of each country and also of each continent. If we try to advance further we shall be faced with all kinds of insurmountable difficulties. We, the republics of America, with our broad spirit of freedom and generosity, have studied not only the problems that are before this Conference, but many others also in pan-American Conferences, pan-American scientific congresses, pan-American commercial and financial Conferences, and, quite recently in the Supreme International Commission for Uniform Legislation, which is now a permanent organisation in every country of America. We have thus succeeded in creating a code of rules, an American system of public law, and also an American code of international law; these are in no way opposed to the universal principles of law,—in them, in the widest sense of liberty and equity, the problems *sui generis* of the American continent have been

taken into account. But in spite of all, we have not yet succeeded in forming a uniform system of law, and we Americans must always make allowance for this. Uniformity is not always either possible or desirable; it is essential that account should be taken of the peculiar situation of each country, and the system we have adopted is perhaps the most practical one.

The laws of each State are the result of its individual geographical situation, and of the habits and customs of its people. These laws are indeed the practical outcome of the most noble and lofty aspirations of each society, and the sole desire of the American peoples is to possess the highest form of civilisation, and to achieve the greatest possible progress. My own country, Venezuela, will be happy, not only to accede to, but also to co-operate in, any work of civilisation and freedom, but such a task must be founded on a basis of equity, and must not be beyond her powers; and, above all, her right of sovereignty and absolute administrative autonomy must be respected.

I cannot accept anything which would tend to contravene these principles, and must therefore refrain from submitting any form of wording whatever, either for Article 1 or for Article 9; I am confident that this Committee will find a means of offering us a text which will really be founded on a true spirit of freedom and equity, and which can truly establish a new international life, inspired only by noble and just ideas; it must not be forgotten that law and justice are necessary for all. As a jurist and an optimist I cannot but continue to repeat to myself the saying of Montesquieu : *le droit sera un jour le souverain du monde*.

M. VALLOTTON (Switzerland; speaking in French). — I have the honour to propose an amendment which also takes into account some observations—in my view very important ones—which were made on the subject of certain amendments. I have already stated the reasons for which I think that it was as the result of a regrettable misunderstanding on the part of the various speakers that the examination of the matters which are again being raised to-day in connection with Article 9 (to which they more rightly belong) was introduced into the discussion of Article 1. We desire conciliation, and we must therefore take into account a certain lack of elasticity in the obligations provided for under Article 9 of the *Green Book*. M. Hostie will shortly explain, with his customary lucidity, what are the scope and range of action of the three paragraphs of Article 9. I have no wish to forestall his statement, but I should like to draw your attention to the fact that it would be desirable for us to discuss these three paragraphs separately. The first one deals with obligations regarding upkeep; the second refers to questions of improvement, and the third is a kind of safety-valve proposed by the various colonial countries. I hope you will excuse me for submitting my amendment at the last moment, but I do so as the result of the speeches which have just been made. I do not claim to be giving a definitive text, but merely to be submitting the idea to you. We propose to add after paragraph 1 a second paragraph to the following effect :—

The extent of the obligation for upkeep shall also be determined having regard to the degree of economic development and to the geographical and political conditions.....

It was the Brazilian Delegate who proposed to add *political conditions*, but I do not lay any special weight on this,.....

.....of the countries for which a particular section of the waterway provides an outlet to the sea and also having regard to the interest of the country traversed by this particular navigable section.....

In my view this would imbue paragraph 1, rigid as it is, with the elasticity required by those States which have new and undeveloped territories and which do not wish to be burdened with obligations regarding upkeep, beyond what is required for communications in these regions.

M. SEELIGER (Germany; speaking in French). — As several of the speakers have pointed out, the terms of this article raise a problem of the highest importance, because we are faced here with the antagonism arising between riparian States and those interested in the use of international navigable waterways. I might say that in the

discussions which have taken place on the subject of the Danube and the Elbe, no solution has yet been found for the question of works to be carried out, and it is therefore essential for the Conference to find some means which will satisfy all, because it is on the ideas expressed by the Conference that the special acts which are to be drawn up will probably be based.

This article states in the first place that the riparian States of an international navigable waterway shall undertake to carry out all works of upkeep, that is to say, those which are necessary to maintain the river in its existing state of navigability. I think that all will agree to this. A river is a gift of nature, and it is the duty of those who enjoy the fruits of this gift of nature to maintain it in the state in which they receive it. But in addition it is desired to compel these States to carry out works necessary for improvement. That is the first difficulty, because opinions will vary as to what is necessary for improvement. We may go further and say that if conflicting opinions arise, the States concerned may compel the other State to allow works to be carried out which it does not desire. I think, with the Netherlands Delegate, that this is out of the question for any self-respecting State. If a State thought that it was in its own interests that certain works should not be carried out on its territory, it is out of the question that it should be compelled to carry them out. Some means must be found to satisfy all interests. I have no wish to enter into details, but I venture to make a suggestion. In my opinion what is needed is an impartial tribunal to settle disputes of this kind. We cannot solve the question of Article 9 without at the same time solving that of the settlement of disputes. It would be better for a State to undertake to carry out an award resulting from arbitration than to undertake to allow works to be carried out on its own territory by another State. Take any international river whatever. The international Commission considers certain works necessary on the territory of one of the riparian States. The riparian State refuses. Is it possible for the Commission to give a final decision on this case? No, there may be conflicting opinions. Then the matter must be brought before an arbitration tribunal composed of other States which have no special interests on the river. I think, therefore, that if we wish to find a solution for this weighty problem we must begin by solving the question of the settlement of disputes.

M. HOSTIE (speaking in French). — I have no intention of detaining the Committee for long. M. Alvarez has made a suggestion which I consider very practical; it is to refer the whole question of Article 9 to the Sub-Committee which is considering Article 1. I am convinced that it is impossible to arrive at an adequate solution to Article 1 without having first considered the difficulties to which Article 9 gives rise, and *vice versa*. I therefore give my whole-hearted support to M. Alvarez' proposal.

I have only one word to add. Even at Paris the Commission of Enquiry did not omit to consider the possibly very different range of the obligation contained in Article 10, according to the stage of economic development of the regions crossed by different waterways. It is obvious that this obligation cannot be the same for the vast and as yet unexplored rivers of Central Africa as for the rivers of Europe, or for certain rivers in America and certain other rivers in the same continent. I think, therefore, that there is a very considerable element of truth in the idea advanced by M. Alvarez. On this subject M. Vallotton, too, has given us some very valuable hints.

As regards M. Lely's standpoint, I only wish to point out to him that paragraph 2 of Article 9 makes no mention of the interests of navigation, for the reason that, if an improvement were contrary to the interests of navigation, it would cease to be an improvement. If, for example, a waterway were deepened in such a way as to become harmful to navigation as a whole, it is obvious that this would not constitute a work of improvement. There is no fundamental question involved here,—it is simply a question of definition, of terminology. It would be sufficient to add to this list what appeared to all of us to be self-evident,—the interests of navigation. The fundamental principle raised in the same paragraph is of a totally different nature, and I think that M. Lely in his explanation tended to confuse two aspects of the question,—the obligation to improve, which is complementary to the obligation regarding upkeep, and the obligation to allow others to improve, which is complementary to the obligation to allow others to be responsible for the upkeep. For the sake of argument,

I will leave aside this second point of view,—the attitude of a State which does not fulfil the obligations under which it is bound; I will confine myself solely to placing before the Committee and emphasising the importance of a problem which it will have to consider in detail,—namely, whether a State may decline any obligation to improve a waterway passing through its territory,—a waterway which is perhaps a gift of nature, but which constitutes the respiratory organ of another country.

The CHAIRMAN (speaking in French). — What M. Hostie said in the earlier part of his speech is exactly what I intended to propose. It is a most sensible suggestion. The Committee has considered every aspect of the question, and every point of view has been put before it. I think that the time has now come to refer this question to the Sub-Committee on Article 1, as these two articles are so closely inter-connected as to be inseparable. I propose that M. Planas-Suarez, the Delegate of Venezuela, should be added to the Sub-Committee on Article 1.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We have some amendments to Article 9. In the first paragraph we ask you to delete the words from *or to permit...* to the end of the paragraph. In paragraph 2 we propose to omit the words *cause to be carried out*.

The nature of our request will at once make our point of view clear, and I have little to add except to express my approval of M. Alvarez' admirable speech, and to ask you to take continental and regional conditions into consideration. I should not like to see a Convention drafted applying indiscriminately to any continent. In fact, M. Hostie said that even in a single continent it is impossible to compare rivers from an international point of view. I will take an example from that continent which is most often under discussion,—Europe. In this continent we cannot pretend that economic, geographical and even topographical conditions are everywhere the same. In the west of Europe, industry is very highly developed, and, as a result, there is an extensive system of waterways, whilst in eastern Europe countries are in a more backward state of industrial and economic development. For this reason we must take into consideration interests other than those of navigation properly so-called, such as agriculture, water-power and so forth.

I realise, of course, that we must make an effort in order to arrive at some result; we must sacrifice something for the general welfare. We are here for that purpose; but it would be better to make clear what is the general interest, than to impose it. What I wish to emphasise is the difficulty attendant upon the obligation of causing works to be carried out. I would beg the Conference to reflect well upon the impossibility for a State of allowing works to be carried out on its own territory. This might lead anywhere. M. Vallotton has suggested a very elastic formula; if he can delete from it the words *cause to be carried out*, we should all be in agreement. M. Seeliger proposes to introduce arbitration. I am not a lawyer myself, but although I have a very great respect for lawyers, I doubt whether we should not be introducing a new element if we called in an arbitrator upon matters of pure sovereignty. If we enter upon this path, where shall we stop? Would it be serving the true interests of the League of Nations to ask it to solve questions such as these, which are perhaps beyond its strength?

M. Hostie defends Article 9; but I think he has discovered a good method in proposing to refer it as a whole, in accordance with the proposal of the Venezuelan Delegate, for the consideration of the Sub-Committee, which may be able to find a better wording and thus reconcile all opinions. I only wish to point out that M. Hostie said something which surprised me as a practical man,—he said that we might make an experiment and see whether the result is good or bad. Unfortunately, such experiments cannot be made; we cannot dig a canal of a certain depth and width, costing perhaps millions and millions, and then say,—“Really, now, we see that it was not worth while.” We may try legal experiments, as M. Lely said, but we cannot make practical ones.

Then M. Hostie says: “Nature has given a country its rivers, and they are also great organs of circulation”. The Roumanian Delegate points out that nature has given us many other things, but favoured States are by no means willing to lend others what

they have received from nature. You say, "Let us take possession of this property; it is nature which has given it to us", but that is as if, seeing a beautiful woman, you desired to take from her her beautiful face. Nature has favoured her, and it is she who benefits. There are many other kinds of natural wealth besides waterways,—there are waterfalls, there is coal. Why do you not want to internationalise these?

Perhaps I have not explained very clearly the elements which favour the adoption of our amendment, but I will ask you to support it, because in our view it provides a formula which will enable us to come to an understanding and to obviate various difficulties.

The CHAIRMAN (speaking in French). — M. Avramovitch's arguments will be considered by the Sub-Committee to which I have referred, and before which he can maintain his claims.

M. ALVAREZ (Chile; speaking in French). — I will ask the Chairman to add to the list of States represented on the Sub-Committee, Bolivia, which also possesses an interest in the question.

M. REINHARDT (Austria; speaking in French). — I should like to remind the meeting that I also had the honour to submit an amendment to Article 9, referring to the exploitation of water-power. This question has been referred to on several occasions. It was pointed out that the utilisation of water-power is a question of the utmost importance, not only from a national but also from an international point of view. A perusal of the Draft submitted to us in the *Green Book* would lead us to suppose that all work connected with the exploitation of water-power is completely impossible. In Article 9 I read *...each of the... States is bound to abstain from any action likely to impede navigation...* If we relied upon that, we might say that all works are prohibited if they have any other aim than the improvement of navigation. A new paragraph might be added dealing specially with the exploitation of water-power. In these circumstances I venture to propose the following amendment for the consideration of the Sub-Committee :—

Alternative A.

In paragraph 1, delete the words from *to abstain from* down to *and also*. Substitute for paragraph 2 the words :—*each riparian State shall have the right to undertake works for irrigation, the utilisation of hydraulic power or other common interests within the limits of its territory, provided that these works do not prejudice the navigability of the international waterway.*

Alternative B

(if the amendment in Alternative A is not adopted).

In paragraph 1, substitute the word *navigability* for *navigation*.

M. MONTARROYOS (Brazil; speaking in French). — I agree that Article 9 should be referred to the Sub-Committee, but there is one point which it would, I think, be useful to settle now while the Committee is sitting, and for this reason I should like to say a few words. We have seen from this long discussion that there is a kind of conflict between two ideas,—the necessity for works for the upkeep and improvement of rivers on the one hand, and, on the other, the need to safeguard national sovereignty. We have seen that the opposition of the majority of those who spoke against the principle of the preservation and upkeep of navigation is inspired by their anxiety on the score of national sovereignty. There must obviously be limits, and we must search well for intermediate terms by which these two standpoints may be reconciled. I think it would not be difficult to find some common ground of agreement, and this again will form part of our task of conciliation.

I think your attention should be drawn to the following questions. Certain South-American countries have signed *inter se* treaties on the subject of works. My South American colleagues have laid great stress on the question of sovereignty; I myself was among the first,—I did so on the very first day. I think it would be useful to put before you a statement of the ideas which have been predominant since 1856, in particular in a treaty concluded between two of the great South American Republics.

The first point is that each riparian State acknowledges its obligation to maintain and improve as far as possible the conditions of navigability on rivers. South

American countries, therefore, acknowledge the need to maintain and improve these conditions as far as possible. I will link together these two ideas,—maintenance and improvement. Moreover, this Convention adds that the necessary works must be completed as rapidly as possible. Here again, the motive is the desire to assure continuity of navigation. Finally,—and this interesting point has been raised by the Netherlands Delegate—for any important works on a large scale which may be necessary it was laid down in this great South American Convention—the river in question was a common one and the works involved the territories of two countries—that these works should be carried out as a result of subsequent special agreements to be concluded. I think that this possibility of subsequent special agreements must be taken into account, and that it would provide a method of conciliation. But it will of course be understood that even in adopting the principle of subsequent agreements, we must not lose sight of the need to reconcile the question of works to be carried out with the idea of sovereignty.

To my mind, when a State allows works to be carried out, it does not sacrifice its sovereignty. It will not consent to the work until it has safeguarded its sovereignty. You know that hydraulic works are very difficult to carry out, and if the work is badly done the prosperity of a whole region may be affected. In these circumstances it is inconceivable that a State should give its consent to the State which is to carry out the work, without previously arriving at an agreement. The two parties must together examine the scheme which is to be executed. When this scheme has been adopted, its control will be in the hands of the State crossed by the waterway,—the consenting State—and in order to safeguard national sovereignty the works will be supervised by this State, the one on whose territory they are being carried out. In this way it seems to me that provision will have been made for everything, national sovereignty will have been completely safeguarded and no kind of difficulty can arise.

M. MULLER (Czecho-Slovakia; speaking in French). — We have solemnly proclaimed freedom of navigation on international rivers, but this freedom would be worthless if the possibility of navigation on the free waterway were not maintained and guaranteed; it is precisely this which is the aim of Article 9.

My country, which is situated on a water-parting, is by its very nature interested,—and vitally interested, in this navigation, and it is of capital importance for it that the downstream portion,—those waterways which connect it with the sea, should be kept up. I must therefore declare that I accept in principle the text of Article 9. I do not share the opinion of those delegations who refuse to be bound to maintain navigability.

I should like now to be given an explanation of the words at the beginning of the article. It says : *in default of any special organisation*. What is understood by a special organisation? Is it a special technical organisation of a riparian State for the purpose of maintaining navigability, or does it mean international Commissions appointed to administer international rivers?

M. HOSTIE (speaking in French). — It would seem to have a wholly general purport, and it certainly does refer to Commissions of this kind. But I would not venture to affirm that it refers to Commissions only. Other methods of organisation may be discovered.

M. MULLER (Czecho-Slovakia; speaking in French). — Then this article does not apply to international rivers which are controlled by international Commissions?

The CHAIRMAN (speaking in French). — All these questions are questions of detail which we cannot consider here. I propose to refer them for consideration to the Sub-Committee (1).

(1) The following amendments to Article 9 were also submitted :—

FRENCH DELEGATION

“Substitute for this article the two following articles :—

“ARTICLE 9. — *Ordinary works for upkeep and improvement*.—In default of any special organisation or agreement, each riparian State is bound to carry out ordinary work in connection with the upkeep and improvement of the channel, towing-paths and installations and their working, as also for

DISCUSSION OF ARTICLE 10

We will now consider Article 10.

ARTICLE 10

Regulation of Navigation.

Subject to any stipulations to the contrary contained in special agreements or treaties, the administration of international waterways will be exercised by each of the riparian States under whose sovereignty or authority the waterway is situated. In particular, each of the said riparian States is both entitled and bound to publish rules and regulations for the navigation of the waterway, and to superintend their application. These rules and regulations shall be framed and applied in such a manner as to facilitate freedom of navigation in the conditions provided for in the present Convention. The method of procedure for such matters as the instituting of proceedings, prosecutions and the repression of acts committed to the prejudice of navigation shall, in particular, be as prompt as possible.

The High Contracting Parties recognise, however, the great desirability of an understanding between riparian States of the same international waterway regarding its administration, and especially of the adoption of navigation rules throughout the course of the waterway as nearly uniform as possible, compatible with local conditions.

M. WINIARSKI (Poland; speaking in French). — During the discussion on the Transit Convention (1) I raised the question on which I wish to speak now. It seems to be absolutely necessary, in the interests of navigation itself, to allow States the possibility, if need be, of allowing towage or other forms of haulage services to be

lighting and buoys, and further to take the necessary measures for removing all obstructions or danger to navigation and generally to maintain such navigation in good order.

"Any State which fails to carry out the works referred to in this article is bound to allow them to be carried out, subject to an allocation of expenditure between the States concerned, proportionate to their respective interest in the said works.

"The stipulations of this article..... (continuation as in draft).

"ARTICLE 9 (a).—*Works for Improvement.*—In the absence of legitimate reasons for not so doing, each riparian State is bound to carry out such improvements as may be demanded by certain States, if such States offer to defray the cost.

BULGARIAN DELEGATION

"In paragraph 1 delete the words : *or to permit their execution subject to an allocation of expenses between the States concerned, proportionate to their respective interest in the said works.*

"Paragraph 2, delete the words : *or cause to be carried out.*

"Insert as a new paragraph 3 : The High Contracting Parties recognise the great desirability of co-operation between the riparian States of one and the same international waterway in respect of its upkeep and improvement, in view of the advisability of applying as uniform a system as possible."

CHINESE DELEGATION

"Should the Conference decide that the definition of internationalisation shall apply to international rivers, without any distinction between general and limited concern, the Delegation proposes certain amendments :

"ARTICLE 9.—*Works for upkeep and improvement.*—Delete the words : *or to permit their execution subject to an allocation of expenses between the States concerned, proportionate to their respective interest in the said works.*

"Paragraph 2.—Delete the words : *should the States making the demand offer to defray the cost, and also the words or cause to be carried out.*"

ITALIAN DELEGATION

"Paragraph 2.—After the words : *hydraulic power* add the words : *or protection against floods.*"

PORTUGUESE DELEGATION

"Substitute for paragraphs 1 and 2 :—

"*Upkeep.*—In default of any special organisation or agreements for the upkeep of an international waterway, each of the riparian States is bound to be responsible for its upkeep and to abstain from any action likely to impede navigation.

"*Works.*—The riparian States are also bound, within the limits of their power, to take all measures necessary to remove obstructions to navigation and also to carry out works for the improvement of the waterways. The riparian State may demand the execution of these works if it offers to bear the cost, and they shall be carried out if the plans are approved by the riparian States and if the conditions of labour are approved by the States on whose territories or waters such works are to be carried out."

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, pp. 46 and 47.

established as monopolies. We have put in an amendment on this subject in the following terms :

The present Convention is to be understood as in no way affecting the rights of a riparian State to establish within the limits of its territory, on a waterway recognised as of international concern, towage services or other forms of monopolised haulage.

M. VALLOTTON (Switzerland; speaking in French). — Whilst taking into consideration the amendment of the Polish Delegate, we must not forget also to insert a formula securing respect for freedom of navigation. This freedom must not be restricted by the institution of towage; the waterway must not suffer thereby. There must only be a monopoly when it is essential for the upkeep of the waterway, and when it is physically impossible to allow a monopoly and a regime of freedom to operate side by side. I think, however, that the essential principle must be respect for the principle of freedom. We must find a formula which shall allow for this principle, of which the Polish Delegate has said not a word in his amendment.

M. WINIARSKI (Poland; speaking in French). — I quite agree with M. Vallotton. In our amendment we had no intention of impeding navigation in any way. Indeed, the very purpose of our amendment is to provide for cases in which the interests of navigation call for the establishment of a towage service.

M. POPESCO (Roumania; speaking in French). — I second M. Winiarski's amendment. Towage services are established mainly in the interests of navigation. They are used chiefly to bring foreign vessels into port, and it is absolutely necessary for navigation to have a monopolised towage service.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I second the proposal of the Polish Delegate.

M. DETŒUF (France; speaking in French). — The effect of the Polish amendment would be to change completely the text of Article 10. At any rate it seems to me that if an amendment of this kind were introduced, an agreement would be necessary between all riparian States to carry out such services, or else an agreement between all the States represented on the river Commission, if such a Commission existed. As has been said, such a navigation service would have to be established for a common purpose, and, in our view, this common purpose should only be recognised by the unanimous voice either of the riparian States or of the representatives of the States on the river Commission.

M. ALVAREZ (Chile; speaking in French). — I think it would be very difficult to say that in the wording of its draft, the Committee may adopt one or more of the provisions contained in Articles 10 and 11 in order to form a whole.

M. HOSTIE (speaking in French). — The intention upon which the solution of the question of towage was based was as follows : — On international waterways the establishment of monopolised towage or haulage service is by no means prohibited, but the creation of such a service must be strictly subordinated to the one aim of facilitating navigation. In other words, a State may not establish a system of monopoly (towage or haulage) on an international waterway except on technical grounds; it may not do so on grounds of political economy or for any other reason whatever, even though not a political one. That was the idea which underlay the solution adopted at Paris.

M. VALLOTTON (Switzerland; speaking in French). — Not for any reason peculiar to any one State, but in the general interest.

M. HOSTIE (speaking in French). — In the general interest of the waterway. We might perhaps find a wording which would follow the lines laid down by M. Detœuf,—

we might say that such a service could not be established except by agreement between the riparian States or the States represented on the international Commission, if there is one.

Mr. H. O. MANCE (Great Britain). — It seems to me that the Polish amendment should have been proposed to Article 3 : *Equality of Treatment*. In Article 3 we agreed that no exclusive rights of navigation should be granted on international waterways to companies or to private individuals. As I understand it, the Polish amendment has nothing to do with the few very special technical cases, but reserves the right of granting monopolies for towage on international rivers. That is obviously an exception to the *equality of treatment* laid down in Article 3. I understand that the French Delegate regards the Polish amendment in the same light.

M. WINIARSKI (Poland; speaking in French). — I made this statement in respect of Article 10, because M. Haas told me that it would be more in place there.

M. Robert HAAS (Secretary-General; speaking in French). — When, at a previous meeting, I proposed that the Committee should postpone the consideration of the Polish amendment until Article 10 was discussed, no comment was made. This was all the more natural because, in the *Green Book*, with which General Mance is acquainted, the question of towage is treated in the Commentary in connection with Article 10. After the observations made a few moments ago it would appear that in order to give full scope for this question of towage it should be dealt with together with Article 10. As presented by the Polish Delegation and treated by the French Delegation, this question does not in the least tend to restrict freedom of navigation or to establish an exception to this freedom, as would happen if it were inserted in Article 3 as a kind of exception. It is a question of applying regulations for navigation on certain waterways in the interests of the navigation itself, and there are instances in which it is necessary for this purpose to establish a public towage service subject to a monopoly. For these reasons, which are very weighty ones, the question should be considered with Article 10, and should be regarded not as an exception to freedom of navigation, but as one of the very conditions for the practice of navigation.

M. VALLOTTON (Switzerland; speaking in French). — Unfortunately Article 3 does not offer us any guarantee at all, because when haulage or towage is the subject of a monopoly, all are treated on the same footing,—all must submit to the monopoly, both nationals and non-nationals. There is no question, therefore, of an exception to Article 3.

M. HOSTIE (speaking in French). — In order to show that we are all really in agreement, I will read once more the text on this subject in the *Green Book* (1) :

In connection with the Preamble, it was explained that on international waterways navigation regulations might only prohibit the free exercise of towage when this was rendered necessary by technical conditions, and would in consequence “facilitate the freedom of navigation”. The Polish delegation had proposed to exclude towage from freedom of navigation.

I venture to suggest the following text :

Monopolised services for towage or haulage may be established with a view to facilitating navigation, by the unanimous consent of the riparian States or of States presented on the international Commission, if one exists.

M. DETŒUF (France; speaking in French). — I should like to ask for the word *public* to be added to the word *service*, in order to make it clear that it is a public interest which is referred to.

(1) See page 428.

The CHAIRMAN (speaking in French). — The text proposed by M. Hostie, with the addition of the word *public*, might perhaps bring the Committee to a unanimous agreement.

M. PHOCAS (Greece; speaking in French). — Allow me to ask M. Hostie for an explanation of the words *facilities for navigation*. Does this include pilotage? A barge may enter a port towed by a foreign tug; it need not be towed by a national tug in order to enter. All that is required is that a certificated pilot belonging to the port should embark on the tug which takes the barge in tow.

M. HOSTIE (speaking in French). — That is a question of practice, and I think we can solve it by laying down in the text a rule that monopolised services may not be established except for the purpose of facilitating the practice of navigation. This is the criterion which we must adopt as a standard. If an international Commission exists, the States represented on it may base their decision on this rule.

M. PHOCAS (Greece; speaking in French). — It might be said that the towage service is established in order to facilitate navigation, when in reality pilotage alone would suffice.

M. WINIARSKI (Poland; speaking in French). — It is not a question of towage alone, but of other means of haulage. I do not quite understand the purport of the French Delegate's remark on *public* services. In the Sub-Committee of the Transit Committee we referred to the possibility of granting a haulage monopoly to a company, as is done, for example, in France.

Allow me also to say, as regards M. Hostie's proposal, that in my view it is for the opposite that we must provide. The State might establish these monopolised services in the interest of navigation and without distinction of flags, but if a riparian State considered itself to be injured, or navigation hindered, it might make a complaint. M. Hostie's proposal, on the other hand, makes the establishment of such a service subject to previous consent, and this would perhaps be going too far.

M. HOSTIE (speaking in French). — We must consider the opposite point of view, which regards towage as a form of navigation in itself, as a shipping enterprise, and which regards a towage monopoly as a derogation from freedom of navigation. The wording which I suggested is a compromise which takes both points of view into account.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should prefer the Polish proposal, which I consider the better one, because it is based on a desire to facilitate navigation, and not on the consent of the riparian or non-riparian States. States may, purely through jealousy, place obstacles in the way of the establishment of such services. Why should the establishment of these services depend upon the will of a State? The sole aim should be to obtain greater facilities for navigation; no obstacles should ever be admitted. Moreover, States which consider themselves injured will always find a means of making their complaints heard, either before the Commission, if one exists, or before the League of Nations. M. Hostie's proposal would not allow of this.

M. DETŒUF (France; speaking in French). — I wish to reassure M. Winiarski as to the meaning of the word *public*. It means: open to all, but not necessarily administered by the State.

The CHAIRMAN (speaking in French). — Does M. Avramovitch accept M. Hostie's proposal?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It imposes so many restrictions that I cannot.

The CHAIRMAN (speaking in French). — The Polish Delegation, which is the author of the amendment, accepts the proposal in principle.

M. WINIARSKI (Poland; speaking in French). — I accept it in principle as regards facilities for navigation, but not as regards procedure. I am in favour of allowing services to be established unless justifiable objection is raised by another State.

M. VALLOTTON (Switzerland; speaking in French). — Those of our colleagues who wish to draw us into this subject forget that after all we are dealing with international waterways. On national waterways, towage is absolutely free for the State to which the waterway belongs. Are we to grant freedom of navigation with one hand and withdraw it with the other?

M. HOSTIE (speaking in French). — The observation of the Greek Delegate seems to have the following meaning:—Towage services subject to monopoly must not be established when the creation of a monopoly does not benefit navigation, and when, from the technical point of view, it is ascertained that private services would be equally suitable. A monopoly is only justified when it offers technical advantages. As this criterion is so limited in character, would it not be wise to take precautions to ensure that the decision on this matter should rest either with a body which can offer every guarantee in this respect, or, in the absence of such a body, with the riparian States considered as a whole?

M. PHOCAS (Greece; speaking in French). — In order to make my intention clearer, allow me to take a concrete example. I fully understand the establishment of a towage monopoly at the Iron Gates; the force of the current there necessitates powerful tugs. But I do not understand the reason for a towage monopoly on parts of the river where navigation is easy and where it is sufficient to have a certificated pilot on board the tug. On the Danube and other rivers there are such certificated pilots who are capable of piloting any tug whatever.

M. SEELIGER (Germany; speaking in French). — Allow me to support M. Hostie's proposal. It seems to me that a clear distinction should be drawn between international and national rivers. As regards international rivers, it is the Commission which must see that freedom of navigation is maintained. If in any special case freedom of navigation has to be maintained on an international river by the creation of a monopoly, the international Commission may decide that one of the riparian States is entitled to establish such a monopoly; but apart from special cases, navigation must be left free on international waterways which are administered by international Commissions. Towage is part of navigation, and on national waterways the State to which the waterway belongs may act as it thinks fit; it may establish a towage monopoly.

M. WINIARSKI (Poland; speaking in French). — When we speak of freedom of navigation on international waterways, we always think of the Danube or the Rhine,—in fact, of great rivers; but the definition of an international river, as laid down by the Committee, may apply to rivers which are quite small and on which towage services would not be sufficient. On these it would be well, in the interests of navigation itself, to have special tugs.

I share M. Seeliger's view as regards great international rivers, but we must not forget the small ones.

M. Robert HAAS (Secretary-General; speaking in French). — The distinction between these two classes of rivers is provided for in the text, which speaks of agreement between riparian States or the consent of the international Commission.

M. DETCEUF (France; speaking in French). — I think it is indispensable on all occasions for the riparian States to be in unanimous agreement, because with a monopolised towage service, a State situated downstream may, by means of the tariffs which

it applies, reduce the whole of the terms of the Convention to a nullity. On account of the large number of rivers to which the Convention may apply, guarantees must be provided against such a contingency, and precautions must be taken in advance by asking for the consent of the riparian States.

The CHAIRMAN (speaking in French). — The subject has been exhausted, and I will now put to the vote the following text proposed by M. Hostie :—

Monopolised public services for towage or haulage may be established with a view to facilitating navigation, by the unanimous consent of the riparian States or of the States represented on the international Commission if one exists.

If there is no objection, this text is adopted.

Mr. H. O. MANCE (Great Britain). — I should like to ask that the explanation given in the *Green Book* (1) shall be introduced into the Report which will be prepared on this Convention.

M. MASENG (Norway; speaking in French). — As regards waterways which are of interest for navigation and for timber floatage, it is obvious that the riparian State is authorised to establish regulations taking into account the interests of timber floatage, on the understanding that the national flag and foreign flags shall receive equal treatment.

M. VALLOTTON (Switzerland; speaking in French). — It is understood that the terms at the beginning of this article apply also to this amendment,—that is to say, that riparian States may conclude any special agreement or treaty which is of a more liberal nature than this amendment.

M. Robert HAAS (Secretary-General; speaking in French). — This question is fully covered by Article 17.

PROPOSAL OF INTERNATIONAL LABOUR OFFICE

The Committee is aware that a proposal (2) has been put before us by the International Labour Office regarding certain questions connected with navigable water-

(1) See p. 417.

(2) *Amendment to the Convention on the International Regime of Navigable Waterways proposed by the International Labour Office.*

Barcelona, 21st March, 1921.

MONSIEUR LE PRÉSIDENT,

On March 8th the Director of the International Labour Office officially informed the Secretary-General of the League of Nations of his desire to see inserted in the Convention on the International Regime of Navigable Waterways, which is at present the subject of consideration by the Barcelona Conference, a clause relative to the conditions of labour of persons employed in inland navigation, with a view to putting into effect the Recommendation on this subject adopted by the International Labour Conference which met at Genoa in July last.

In my capacity as representative of the International Labour Office at this Conference, I have the honour to communicate to you the final text of the proposed amendment. I should be grateful if you would be good enough to bring it to the knowledge of the various Delegates and, when it comes up for discussion, to allow me to explain to the Conference the reasons which have guided the International Labour Office and which, in its view, appear to militate in favour of its proposal.

I should also be much obliged if you would be good enough to inform the Delegates that documents which are likely to interest them, such as the text of the Resolutions adopted by the Genoa Conference and the verbatim report of the discussion which arose in connection with the Recommendation concerning Navigable Waterways, have been deposited with the Distribution Section of the Conference for their use.

I have the honour, Sir, etc.

(Signed) Dr William MARTIN.

Text of Amendment.

Insert after Article 10 a new article worded as follows :—

“The High Contracting Parties also recognise that it is highly desirable that the conditions of labour on international navigable waterways should be as uniform as local conditions permit.

“The High Contracting Parties whose territory borders upon an international navigable waterway will endeavour, in collaboration with the International Labour Office, and after consulting the organi-

ways. A similar question had been raised at a previous meeting by the German representative. I think that the discussion of Article 10 provides an opportunity for considering this question, which deals in a general way with the manner in which navigation should be regulated.

The CHAIRMAN (speaking in French). — I think we shall all agree to hear M. William Martin on this subject. Before calling upon him to speak I will ask him, in view of the short time at our disposal, to be as brief as possible.

M. William MARTIN (representing the International Labour Office; speaking in French). — Allow me first of all, without unduly prolonging my remarks, to thank the Chairman and the Committee for being so good as to hear the statement which I am about to make on the motives which led the International Labour Office to submit to you the proposed new article now before you.

Before entering upon the subject itself, I should like to make a very short historical summary of the labour question and inland navigation. When the first International Labour Conference, held at Washington in October 1919, settled the conditions of labour in industry, it did not in any way except transport. It even explicitly included it by deciding that the provisions regulating transport by sea and inland waterway would be fixed by a special Conference on labour at sea and on waterways. The special Conference met at Genoa in June last, and some of the members now present, notably my eminent friend M. Pierrard, took part in it. This Conference did not wholly fulfil the promise which had been made to labour on inland waterways by the Washington Conference, and its reasons for not doing so are of considerable importance. The chief reason was that the Genoa Conference lacked experts on questions of inland navigation, and in particular was unable to arrive at a sufficiently explicit definition of international waterways to allow of any general regulation of the conditions of labour. Moreover, as it was obliged to make these regulations for the whole world, it met with very great difficulties, due to the great diversity of the conditions of life and the technical conditions on different rivers. But though it did not solve this question itself, it had no intention of abandoning the question of internationalising conditions of labour for inland navigation, and passed a ruling, some extracts from which I will now read :—

I

In view of the declaration in the Treaties of Peace that all industrial communities should endeavour to adopt, so far as their special circumstances will permit, *an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained*, the International Labour Conference recommends :—

.....

II

That those Members of the International Labour Organisation whose territories are riparian to waterways which are used in common by their boats should enter into agreements for limiting, in the direction of the aforesaid declaration, the hours of work of persons employed in inland navigation on such waterways, after consultation with the organisations of employers and the organisations of workers concerned.

sations of masters and workmen concerned, to conclude agreements relating to the general conditions of labour of persons employed in navigation on the waterways in question, in accordance with the principles laid down in Part XIII of the Treaty of Versailles and in the Draft Conventions drawn up by the International Labour Conferences."

As a result of the decisions of the Washington Conference, the question of labour in inland navigation was put before the Second International Labour Conference which met at Genoa in July 1920; it adopted a Recommendation on this subject which provides for the conclusion, between riparian States whose territory borders on the same navigable waterway, of agreements relating to the regulation of labour for persons employed in inland navigation.

The International Labour Office at once put itself in communication with the River Commissions set up by the Treaties of Peace, in order to put this Recommendation into effect. The Labour Office now asks the Conference on Communications and Transit to consider itself as the competent organisation to put into effect the Genoa Recommendation by introducing into the Convention on the International Regime of Navigable Waterways a provision calculated to facilitate the general application of a principle established by the Covenant of the League of Nations, by that part of the Treaties of Peace which relates to the International Labour Organisation, and by the decisions of two Conferences held under the auspices of the League of Nations.

III

That such national legislation and such agreements between riparian countries should follow as far as possible the general lines of the Draft Convention concerning hours of work adopted by the International Labour Conference at Washington, with such exceptions as may be necessary for meeting the climatic or other special conditions of the countries concerned.

.....

V

That each Member of the International Labour Organisation should report to the International Labour Office, within two years after the adjournment of the Genoa Conference, the progress which it has made in the direction of this Recommendation.

I venture to point out that, in the special legal terminology of the League of Nations, and particularly of the International Labour Organisation, a *recommendation* is not a simple *vœu*,—a recommendation implies for the States Members of the organisation certain definite obligations, one of which is that the Governments shall submit to Parliament such legislative measures as may be necessary to carry the recommendation into effect.

The International Labour Office, being expressly charged by this recommendation to carry it into effect and to supervise its application, has followed a suggestion made by the special Committee appointed at the Genoa Conference to consider these problems, and entered into negotiations with the river Commissions established by the Treaty of Peace. The Czech, Roumanian and German Delegates of this Committee were very emphatic on this point. On July 31st the Labour Office put itself in communication with the Rhine Commission; on August 20th with the Elbe and Oder Commissions; on August 30th with the Danube Commission, to which the Labour Office submitted a draft article, introducing into the Final Danube Statute the following text :—

The Danube Committee will remain in touch with the International Labour Office in order to study the general conditions of labour of the persons employed in international navigation on the Danube. In particular it will have the duty of drawing up, with the collaboration of the International Labour Office, draft international agreements for the purpose of regulating these conditions of labour and submitting draft agreements for the approval of the Governments of the riparian States concerned.

Hitherto the river Commissions have not been able to take much action in the matter. Nevertheless, Article 45 of the Draft Statute of the Danube takes account of the suggestion of the International Labour Office, and I think I may say that some of the draft statutes submitted to the Rhine Commission also contain provisions to this effect. Finally, on March 8th last the Director of the International Labour Office wrote an official letter to the Secretary-General of the League of Nations asking that the proposal now before you should be submitted to and considered by this Conference.

I need not remind you, however, that since that time the question has been raised elsewhere by the proposal of the German Delegate regarding Article 5 (1). This proposal appears to me particularly important, in that it shows the close relations which exist between questions of labour and the problems of navigation which you are considering here. You cannot fail to recognise that the question is intimately bound up with the problems which you are now discussing. What does M. Seeliger himself say, if I understood him aright? He says that in certain instances a country may adopt labour measures which are particularly favourable,—comparatively extensive measures of protection for the workers, and that if the country intends to apply these measures on that part of the river which is subject to its jurisdiction and sovereignty, obstacles to navigation may result. The German Delegate's remark appears to me all the more worthy of consideration because these obstacles to navigation will be

(1) See p. 111.

greater in proportion to the social development of the State in question,—that is to say, the State will have more respect for the engagements which it has undertaken as a Member of the League of Nations; Article 427 of the Treaty, after enumerating various principles of advanced social legislation, states :

The High Contracting Parties are of opinion that... [these principles]... are well fitted to guide the policy of the League of Nations.

Accordingly, the more completely a State fulfils the duties it has undertaken as a Member of the League of Nations, the greater will be the restriction that it may be called upon to apply to navigation in the carrying out of these principles. I do not wish to deal with this problem at great length, as this would, I think, raise vexed questions of international law. The question is whether it is the flag or the territory which determines legislation applicable to a crew. But I think that the real importance of the proposal which I am putting before you is that, far from raising this question, it abolishes it. It is a difficult question to solve, as is proved by the legal polemics between nations to which it has given rise, but it can be disposed of by unifying two systems of law, that for the flag and that for the territory,—that is to say, by unifying as far as possible the different territorial laws governing one and the same river. I have great pleasure in citing in support of this view an opinion expressed to me by M. Charguéraud before his regrettable departure. He told me that he too considered that labour questions were essentially bound up with questions of freedom of navigation; they were really inseparable. This is the purport of the proposal put before you by the International Labour Office, but you must understand exactly what it is that the International Labour Office desires.

What the International Labour Office asks of this Conference—and I should like to emphasise this point—is not to regulate conditions of labour itself,—such a suggestion might appear outside the powers of this Conference and certainly beyond the competence of its members. Indeed, labour questions can only be dealt with in an extremely technical manner. What the International Labour Office does ask of it is merely to state a problem,—the principle of the unification of labour conditions on each of the international rivers; not unification on all the international rivers in the world, but unification river by river. It will be for the States to put this into application, and the Conventions provided for in the proposed new article will apply only to one river, and will have no general character. Moreover, the questions with which these Conventions will deal are not specified. In this respect the proposal submitted to you is wider than the Genoa Recommendation, which treats specially of hours of labour, whereas it may be important for navigation that conditions of labour other than working hours alone should be unified. In these circumstances, as it applies only to one river, and is drawn up by the riparian States of that river, there is no technical obstacle.

Of course I may be told that there are difficulties, that conditions vary extremely; but if there were no variations, there would be no need for a Convention, and it is clear that the diverse conditions with which international conventions are confronted are often their very justification and *raison d'être*. But when such diverse conditions apply only to one river they should not be so formidable as to cause the Conference to quail before the task. Moreover, until the Conventions have been concluded—they have been referred to the States—there would surely be no objection to complying with the suggestion of the German Delegate by reserving the rights of States, if need be, pending the conclusion of Conventions.

What the International Labour Office proposes is not essentially new. The Genoa Recommendation lays down in particular—as I have read to you—that a report should be sent to the International Labour Office within a period of two years. Accordingly, the principle of the collaboration of States with the International Labour Office in this respect has already been affirmed by an international Conference. It has been recognised by the League of Nations on several occasions. Similarly the principle of Conventions between States, which is also provided for in each proposal, already exists in the Genoa Recommendation.

Although, then, the proposal does not contain anything essentially new, I should like in conclusion to show you the importance which the International Labour Office

attaches to it. This importance is two-fold. In the first place it has to a certain extent a confirmatory interest. The recommendation passed by the Genoa Conference is addressed to individual States. I have already told you that the Committee had already had in view collaboration with a group of States interested in any one river; and today, when you are all assembled here, representing for the most part, the States Members of the Labour Organisation to which the Genoa Recommendation was addressed, the Labour Office asks you not to withdraw from the obligations which on the strength of this Recommendation are already incumbent upon each of you, or upon each of the States which you represent. In the second place the Labour Office attaches great importance to its proposal, in view of the co-operation which it provides for between the International Labour Office, the Committee which you have created and the States which you represent.

I will venture to remind you that at the beginning of our labours, Professor Van Eysinga made a speech in which he pointed out that the essentially new element of a Conference of this kind is that it has its foundation in the League of Nations, and that it is thus assured of collaboration between all the organisations of the League of Nations. Such collaboration is necessary if the work of all the organisations of the League is to be effective.

The International Labour Office calls upon you to realise that whether you wish it or not, the questions which you are called upon to treat and those treated by the International Labour Office overlap. As I have already pointed out, this Conference is solving questions connected with labour, through the very fact that it is defining navigable waterways—the stumbling-block which prevented the League of Nations from doing effective work in this domain.

In short, what the Labour Office asks of you is the logical conclusion of what you are doing, for you cannot really unify the conditions of navigation without unifying conditions of labour and, inversely, you cannot facilitate navigation without widening the gaps and increasing the conflicts between the various national systems of law. For the same reason I would point out to the Conference that if it refused to enter upon the path which we have indicated, it would be faced with the fact that the Genoa Conference was unable to deal with questions of inland navigation because it had no technical experts, and the Conference of Barcelona could not deal with them because it had not the necessary powers. As a result there would be a gap between two organisations of the League of Nations on all questions in which legislation could not be passed and the solution of which could not be provided. The work of the League of Nations,—the very reason for its existence, would be imperilled. It is your work, gentlemen, because you cannot separate the vessel and the crew and legislate for the vessel without making provision for the difficulties of the crew; and it is the work of the International Labour Office, because the labour of inland waterways has already been given promises three times,—by the special commission appointed under the Treaty of Peace, at Washington and again at Genoa. It is these promises which I have the honour, on behalf of the International Labour Office, to ask you to help us to fulfil. We think that this is essential if we are to give to the common work of the League of Nations and the International Labour Office, and to the work which you are doing here, that broad foundation based upon public opinion which is so necessary for its practical effect.

The CHAIRMAN (speaking in French). — I thank M. William Martin on behalf of the Committee for his very interesting communication, and I should like to hear the views of the meeting on the procedure to be adopted. At the first meeting at Genoa, when M. Albert Thomas pleaded the cause of the International Labour Office, the Committee, without adjourning, exchanged views and took a vote. But other methods of procedure have been adopted at other international meetings; the agenda has been completed and a discussion was held afterwards.

M. HAAS (Secretary-General of the Conference; speaking in French). — The Committee has a very crowded Agenda, and the question before us is apparently very complex in its origin, but extremely simple as regards its wording, for it is, after all, a question, not of indicating the methods by which the agreements relating to labour

are to be made, but simply of explaining their desirability and the necessity for them; in order to save time, therefore, I think that, we might endeavour to deal with the question at once. If any very serious difficulties should be raised, we might consider some other procedure; but I think that, from the point of view of speed, the method I have suggested will prove the best.

M. PIERRARD (Belgium; speaking in French). — I had the honour to be a Member of the International Conference at Genoa, the Agenda of which included, amongst others, the questions of seamen's labour, the eight hour day, the forty-eight hour week, compensation for unemployment due to shipwreck, and sailors' contracts.

The International Conference at Genoa produced only three Conventions; the fourth, concerning seamen's labour, was not passed, because the necessary quorum—which, according to the Rules of Procedure, consisted of two-thirds of the votes—could not be obtained. There was also a question on the Agenda,—that of the labour, not of seamen, but of bargemen, that is, labour connected with inland navigation. This question was the subject of long debates, and no convention was drawn up as a result of it; a recommendation was, however, passed by a large majority. As I voted for that recommendation, I see no objection to voting for it again here; but I feel that I must draw M. Martin's attention to the fact that it was not found possible to draw a clear line of demarcation between maritime and inland navigation. I personally made great efforts to find a solution. We western peoples understand very clearly what we mean by inland navigation, namely, barge traffic, that is to say *batellerie*, or navigation by means of vessels manned by *mariniers* (to use the French word) and not by *marins*. But the question was asked whether navigation on the St. Lawrence, the Scheldt, and the Amazon, for instance, did not also constitute inland navigation. No agreement could be reached. If this class of navigation had been recognised as inland navigation, the result would have been that the Draft Recommendation which applied to bargemen, would *ipso facto* have become applicable to seamen, although a vote had already rejected the proposal. I notice these words in the amendment before us : *The High Contracting Parties recognise that it is extremely desirable that labour conditions on international waterways...* We here touch upon maritime navigation, and I think this would be going further than the Genoa Conference would have wished. Please observe that I am one of those who were defeated at Genoa on the questions of the eight-hour day and the forty-eight hour week; but I think it would be taking a snatch vote from this Conference to cause it to go back upon the question of maritime navigation properly so-called. I therefore suggest that the question be reconsidered by a Sub-Committee which would examine the question in collaboration with M. Martin.

Sir Louis KERSHAW (India). — As one who was present at the Genoa Conference, I feel very strongly that the Committee would be well advised to reject the proposal of the Labour Office. My first objection is that our Conference is not competent to deal with labour questions. It is part of a technical organisation, and in the League of Nations there is a separate organisation to deal with labour questions. The guiding principle of that organisation is that all interests shall be represented, not only Governments, but workers and employers as well. Annual Conferences are held; one was held at Washington and another at Genoa. If a Labour question is to be taken up, and a decision reached, in the absence of the workers and the employers—the people chiefly concerned—they will, I think, have very good reason to complain. What was done at Genoa as regards this question of the hours of work? It was left absolutely in the air. No decision was reached regarding hours of work at sea. The only decision reached regarding hours of work on inland waterways was the Recommendation read by Dr. Martin. That Recommendation has a definite meaning under the Treaty of Peace. Under the terms of Article 405, each Government is bound to place that Recommendation before the competent authority *for the enactment of legislation or other action*.

But there is one practical point which has not been touched upon. I think I am right in saying that sea-going vessels will use the international waterways dealt with in this Convention. The conditions of labour in a sea-going vessel are regulated by

the Government of the country whose flag it flies. No international commission can regulate the conditions of labour on a French vessel or a British vessel which sails up the Danube. It seems therefore that for a practical reason the proposal ought to be rejected.

There is one other point. The Genoa Conference made a recommendation to the various Governments; but the International Labour Office asks this Conference to go further and to insert in a Convention, which is a totally different affair from a Recommendation, an obligation on Governments to do certain things. It seems to me that here, at Barcelona, without representatives either of workers or of employers, it is too much to ask this Conference to expect Governments to enter into any obligation of the kind.

M. DETCEUF (France; speaking in French). — I do not dispute, from the point of view of the competence of the Conference, the difficulties which may be raised by the insertion of a clause relating to labour in the Convention which we are preparing; but I must point out that, as regards inland navigation, it is most desirable that certain questions, such as those of labour—and others also—should be settled in such a way as to be as uniform as possible throughout the length of all international rivers. Sea-going vessels, of course, do not enter the question, since they preserve the same character wherever they go. As regards labour, we are concerned with vessels for inland navigation, and with what are called bargemen (*mariniers*), and, as regards commerce, with freights, and the general rules which are applied. It seems to me beyond question that in this respect it is in the common interest that there should be the greatest possible uniformity, not only on all rivers, but on each individual river.

The question whether this clause should appear in the Convention is a somewhat difficult one. It would be the only Recommendation appearing in the Convention. The Convention is categorical on every other point; only with regard to this one would it contain a Recommendation. Perhaps in these circumstances the best solution would be to place such a Recommendation as that suggested side by side with the text of the Convention.

The CHAIRMAN (speaking in French). — Separately from the Convention?

M. DETCEUF (France; speaking in French). — Yes.

M. SEELIGER (Germany). — I would beg to emphasise what the French Delegate has just said. It is proposed to add a provision of the kind which M. Martin has had inserted in Article 10. Some speakers consider that that was going a little beyond the scope of the Convention. During the discussions on the Danube Statute, a provision of this kind was inserted. Here is the provision in question :—

The States Signatories of the present Convention undertake to establish, by a separate Convention, uniform regulations of a civil, commercial and sanitary nature, regarding the exercise of navigation and transportation contracts on the Danube river system, which is included within the jurisdiction of the International Commission. This Convention may also, in agreement with the International Labour Office, regulate conditions of labour for the personnel employed on the navigation of this system.

You will see, therefore, that besides the clause relating to uniform charges on freights, commercial law, and so on, a suggestion was put forward for drawing up regulations for labour. If your Conference were to express a *vœu* such as this, I think that would satisfy M. Detceuf and M. Martin.

The CHAIRMAN (speaking in French). — I think the question must be divided. In the first place, is the Committee of opinion that this proposal must take the form of a recommendation or a *vœu*? Secondly, does it consider that it must be inserted as an article in the Convention itself?

M. VALLOTTON (Switzerland; speaking in French). — In view of the conflicting opinions which have been expressed, I think a distinction should be drawn between waterways for which there are commissions and those for which there are not. If we

were to apply our *vœu* generally, the result might not conform very closely to the intention of the International Labour Office. The latter would perhaps be acting more wisely if it advocated a solution of a more opportunist nature, by which a waterway would be handed over to River Commissions, either existing or to be formed, and the rest would be left to the future. I do not know whether M. William Martin would support this proposal, but it would at least have the advantage of allowing each Commission to ascertain whether it preferred to adopt a system of uniformity or a system based on flags on the particular river allocated to it.

I will not express an opinion on the principle of the question; I simply propose to place the recommendation before each Commission, which will decide for its own river as it thinks best, unless States concerned in several rivers consider it preferable to enact uniform rules for the whole of their territory. We are not competent to decide that question.

The CHAIRMAN (speaking in French). — Everyone appears to agree upon the form of a *vœu*.

Sir Louis KERSHAW (India). — Is there not the third alternative, that the Conference should take no action whatever?

Mr. H. O. MANCE (Great Britain). — With a view to conciliation I propose a fourth method,—that we should decide that this is beyond our competence, and should simply forward it to each of the River Commissions, as suggested by M. Vallotton, asking them to give it the attention which it merits. The British Delegation has no instructions whatever on the subject, and could not take part in any vote, nor could we accept any other solution.

Sir Louis KERSHAW (India). — I quite agree.

M. DETŒUF (France; speaking in French). — I wished to speak in order to raise a point of order. I ask the Chairman, in the first place, to submit to the Committee the question whether it is agreed on the principle that it is desirable that laws regarding labour should all be in conformity; then, when this question of principle has been decided, whether the Committee considers it desirable that it should be applied to all rivers, or only to certain rivers; and finally, whether the Committee considers that a similar condition should be inserted in the Convention.

The CHAIRMAN (speaking in French). — According to what General Mance has said, the British Delegation does not wish to discuss the substance of this question.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I would ask the Chairman to put the motion of the British Delegation to the vote. It is the one which goes furthest, and, according to our rules of procedure, it is on that one that the vote should be taken.

M. DETŒUF (France; speaking in French). — I support this view.

M. PIERRARD (Belgium; speaking in French). — We are all agreed that the proposal should not be inserted in the Convention. As regards recording a *vœu*, that is another matter. The British Delegation states that it has no instructions from its Government, but a *vœu* only commits those who make it. At Genoa, what we passed with regard to barge traffic was only a *vœu*. Here I am entirely in agreement with Sir Louis Kershaw, although we were not on the same side of the fence at Genoa. Without going back upon what was done at Genoa in regard to seamen's labour properly so-called, there can be no question of treating international waterways; the question has not been settled since the Genoa Conference. I was present at two other Conferences, held at Brussels, where an attempt was made to arrive at an agreement, but without success. I think, therefore, that we should be going beyond what has

been done up to the present moment from an international standpoint, if we tried to legislate in the matter of seamen.

The question of bargemen is quite different. They also navigate on international waterways. A recommendation was made with regard to them at Genoa; it was passed by a large majority, including, I believe, Sir Louis Kershaw. In these circumstances, he would surely not object to repeating his vote here, if the question were presented in the form of a *vœu*. Everything is there.

M. HAAS (Secretary-General; speaking in French). — Without intervening in any way in the root of the discussion, I should like to say a few words regarding the competence of the Conference. It has been said that, as these matters form the subject of decisions of the Labour Organisation, this Conference should not deal with them. According to the representative of the Labour Office, the work of the Genoa Conference was hindered partly because the Conference lacked technical competence such as the present Conference possesses. I should like to draw your attention to the dangers in store for the organisations of the League of Nations or organisations connected with it, such as the Labour Office, if a question is simply rejected whenever it is not specially within the competence of the organisation in question. It would be very desirable for the various organisations created within the League of Nations to be able to help and collaborate with each other. The procedure employed here should form a precedent; it should be encouraged. Any one of these organisations should be allowed, as far as possible, to explain what it has been able to do within its own sphere, and to ask help from another organisation. I therefore consider that, whatever solution may be found for the main question, it would be better not to argue from the point of view of strict competence, because the manner in which the problem is placed before you is the normal way which will in future be adopted more and more in order to assure close touch between the various organisations of the League of Nations, for whose very existence mutual support is essential.

Mr. H. O. MANCE (Great Britain). — I should like to say that if this proposal had been circulated with the agenda to all the Governments concerned, each Government would have had an opportunity to study the question, and, if it considered it desirable to discuss it here, to send competent experts; but since this has not been done, the proposal is quite out of order. I should like to observe also that I do not think we can accept at once, and without qualification, the very wide powers which our Secretary-General has suggested should be given to any organisation of the League of Nations, to approach any other organisation without at least ample warning, with a question, in order that the desirability of bringing up such a question should be considered. I think that, unfortunately, as this proposal was not circulated beforehand to the various Governments, we have lost a great deal of very valuable time, and this may seriously impair the business which we have met here to consider.

The CHAIRMAN (speaking in French). — ¹²³~~122~~ The discussion is at an end. The British proposal amounts to this:—*The Barcelona Conference, by reason of the fact that this matter is not within its competence, refers the proposal of the International Labour Office to those River Commissions which are already in existence.*

M. VALLOTTON (Switzerland; speaking in French). — It would be desirable that this recommendation should not appear to have been shelved. In order to fall in with M. Haas's views, we might supplement it by the addition of the following words:—*Requesting them to be good enough to examine this proposal as early as possible.* While not coming to a decision on the root of the question, we should not appear to be shelving it.

Sir Hubert LLEWELLYN SMITH (Great Britain). — We agree to the softening of the wording, but we do not accept the substance.

M. PERETZEANO (Roumania; speaking in French). — If we consider that the question is not within our competence, our sole course is to reject the proposal.

The CHAIRMAN (speaking in French). — I put to the vote the British proposal, as amended by M. Vallotton. It now reads as follows :—

The Barcelona Conference refers the proposal of the International Labour Office to the River Commissions already in existence, requesting them to be good enough to examine it as early as possible.

The proposal was adopted by 21 votes to 0.

M. PIERRARD (Belgium; speaking in French). — I did not take part in the voting, and I now ask to justify my abstention. I should like the Committee to have gone to the root of the matter and to have discussed the *vœu* to be adopted. Personally, I voted for this recommendation at Genoa, as did Sir Louis Kershaw, and I could not vote against the same *vœu* here without recanting my opinion. Another reason for my abstention was that I consider, as does General Mance, that the Conference should not deal with a question which has not been placed on its agenda and which is entirely outside the scope of its work.

APPOINTMENT OF RAPPORTEUR ON QUESTION OF NAVIGABLE WATERWAYS

Mr. H. O. MANCE (Great Britain). — Before we separate I should like to suggest that we should choose our rapporteur. The duties which have been imposed on me as the result of the honour of my election as assistant-rapporteur for the Transit Convention have made it clear to me that it is essential that the rapporteur should set to work as early as possible and prepare a preliminary draft of his Report, in order not to have too much work to do at the last moment. I beg to propose M. Montarroyos as rapporteur for this important Convention. I think we have all—especially the authors of the *Green Book*—been struck with the intimate knowledge which, from the moment of his first statement in plenary session, he has displayed on all the subjects dealt with by us, and also by the lucidity with which he has explained his point of view, and the conciliatory spirit with which he has helped us to arrive at an agreement. I feel perfectly certain that we know M. Montarroyos well enough to be satisfied that he will adequately defend any Convention upon which he is asked to report.

The CHAIRMAN (speaking in French). — The Committee appears to me unanimous in accepting General Mance's proposal. I believe I am voicing the views of all in requesting our colleague, M. Montarroyos to be good enough to consent to be our rapporteur. We shall be most grateful to him if he will.

M. MONTARROYOS (Brazil; speaking in French). — It is I who am grateful to the British Delegate and to all my colleagues on the Committee for the honour which they do me,—an honour in which I see only a compliment paid to my country.

The meeting adjourned at 7.30 p.m.

EIGHTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Tuesday, April 5th, at 4.30 p.m.)

REPORT OF SUB-COMMITTEE ON ARTICLE 7 — ADOPTION OF PARAGRAPH 4 OF ARTICLE 8 —
DISCUSSION OF ARTICLE 11 — ADOPTION OF ARTICLES 12 AND 13 — DISCUSSION OF ARTICLE 14
— DISCUSSION OF ARTICLE 15 — DISCUSSION OF DRAFTS (ARTICLE 15[a]) PROPOSED BY THE
ITALIAN AND NETHERLANDS DELEGATIONS.

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLE 7

The CHAIRMAN (speaking in French). — We will now consider Article 7, which has been drafted by the Sub-Committee (1). I will read the article.

ARTICLE 7

Transit, Customs Formalities.

As regards customs formalities, the transit of vessels, passengers and goods on waterways of international concern shall be affected under the conditions established by the Convention on Freedom of Transit. In cases where transit takes place without transshipment, the following additional provisions shall be applicable :—

When the two banks of a waterway of international concern are within the same State, the customs formalities on goods in transit will be limited to placing them under seal or padlock or in the custody of customs agents.

When a waterway of international concern forms the frontier between two States, vessels, passengers and goods passing in transit shall be exempt from all customs formalities, except in those cases in which there are valid reasons of a practical nature for carrying out customs formalities in the part of the river which forms the frontier, but such formalities must not interfere with the facilities of navigation.

The dues provided for and authorised in Article 3 of the Convention on Freedom of Transit shall not apply to the transit of vessels, passengers and goods on waterways of international concern, it being understood that vessels in transit may be called upon to provide and bear the cost of the board and lodging of customs agents who may be strictly necessary for purposes of supervision.

Mr. H. O. MANCE (Great Britain). — Several amendments were referred to the Committee on Article 7, and we have dealt with them all in turn, but they overlap in the resulting draft, and I shall not perhaps be able to follow each amendment in sequence. The alterations to the text now presented, as compared with the original text, result from the following considerations. We have begun with the words : — *As regards customs formalities.* These words meet two of the amendments put forward; firstly, the report of the Chinese Delegation, dated March 24th, on the relations between the different Conventions (2), and, secondly, part of the amendment of the Serb-Croat-Slovene Delegation (3). The difficulty was that it was not quite clear from the text that vessels in transit would be subjected to the other conditions of this Convention,

(1) See p. 125.

(2) See text of the Report, p. 200.

(3) See p. 122.

and I think we were all agreed that this was not so. The second point dealt with is the Italian amendment to omit the last paragraph of the article. That amendment was withdrawn by the Italian Delegation, but for a short period it was re-introduced by the Polish Delegation. However, we arrived at a unanimous agreement in the following sense :—In the first paragraph we limited the whole of the article to cases in which transit takes place without transshipment, and, subject to that, it was agreed that in principle the last paragraph of the article should be retained, subject to a slight addition in order to meet the proposal of the Serbian Delegation. That change is comprised in the last few words : *it being understood that vessels in transit may be called upon to provide and bear the cost of the board and lodging of customs agents who may be strictly necessary for purposes of supervision*. There was a slight contradiction in the *Green Book*—it is very rare to find such a thing!—between the text of the Draft Convention and the Commentary, and, by bringing this sentence into the Convention, the Convention as a whole becomes more logical. There remained the question whether this last paragraph should remain in Article 7 of the Waterways Convention or should be transferred to Article 3 of the Transit Convention, to which it is an exception. If we decide to retain this provision here, then the words *customs formalities* ought to be eliminated from the heading, because it is not really a question of customs formality. Various views were expressed, and arguments were expressed in Sub-Committee both for and against inserting it in the Transit Convention; we decided eventually, that, as there was no unanimity of opinion, it should be left in the last resort to the Drafting Committee. I consulted Sir Cecil Hurst on the point, and he told me that he could not give me an answer without very careful consideration, but that the basis of the decision should be to make the matter as clear as possible.

Two or three amendments had already been agreed to by the Committee before the article was referred to us. I will mention them to show that we have not overlooked them. Instead of : *will be limited to placing them under seal or in the custody of a customs agent*, the text now reads : *will be limited to placing them under seal or padlock or in the custody of customs agents*. There was an amendment by the Chinese Delegation dealing with the river Amur. The Sub-Committee unanimously agreed that it was impossible to introduce into each separate article an amendment dealing with special cases, and that the Committee should be asked to consider this point by itself in a separate article. The object of the first amendment of the Serbian Delegation was to admit certain exceptions to the third paragraph of the article, in order to allow the establishment on the River Drave—we were all convinced that this would probably be desirable—of customs examinations, although this river for a great part of its course forms the frontier between Yugo-Slavia and Hungary. The Sub-Committee, however, unanimously agreed that this case was already provided for in the text, but thought that, in order to satisfy the Serbian Delegate, and to make it perfectly clear that this was indeed so, it would be well to transfer from the *Green Book* to the Report on Waterways, with a reference to the Drave, the observation on page 75 of the *Green Book* explaining why the exception was made; the text would then read :—*the exception provided for at the end of the second paragraph of Article 7 had reference more especially to the present system of customs formalities on the Meuse and on the Rhine, at Eysden and Lobith, and also on the Drave*.

There remains an amendment by the Czecho-Slovak Delegation which had already been considered in connection with the Convention on Freedom of Transit, to the effect that the cargoes of vessels in transit under customs seal should not be liable to customs inspection. This amendment was discussed at great length, and we reached an agreement, subject to a reservation on the part of the Czecho-Slovak Delegation, which, however, may not wish to maintain it. We agreed that the substance of the amendment was already provided for under Article 5 of the Transit Convention and Article 7 of the Waterways Convention, and that it would be sufficient for all practical purposes if it were mentioned in the Report that, in so far as there might be a discrepancy between Article 5 of the Transit Convention and Article 7 of the Waterways Convention, Article 7 should prevail; in other words, the intention is that the greater facilities accorded to vessels in Article 7 should be substituted where necessary for the lesser facilities granted in the Convention on Freedom of Transit.

The Sub-Committee also discussed the question whether navigation on certain

rivers would not be facilitated if, in order to reduce the necessity for customs examinations, we decided that navigation regulations should also refer to the manifests of vessels; but we agreed that there was no need to insert a text on this subject, as Article 7 of the Waterways Convention and also the last sentence of Article 5 of the Transit Convention, appear to admit the possibility.

One further question was raised. It was pointed out that it might not always be physically possible to put the second and third paragraphs of this article into application. This question was discussed at Paris, and it was decided to insert in the commentary that, in order to take advantage of these facilities it was clearly desirable that vessels should be fitted up in such a way that, even if they could not be completely sealed by customs officers, they should at least have compartments capable of being placed under seal. Obviously if a cargo arrives consisting of goods in transit, mixed with others which are not, such a cargo cannot be put under seal; but it was thought better to make it quite clear that vessels could not claim to travel with their cargo under seal unless they were fitted up in such a way as to make this physically possible.

I should like to add that the reservation of the Czecho-Slovak Delegation was not a formal one. We really arrived at an agreement, but I mentioned it because I understand that the Czecho-Slovak Delegation had some slight hesitation in the matter, and I wish to give the members of that Delegation an opportunity of saying whatever they desire to say.

M. KRBEK (Czecho-Slovakia; speaking in French). — The senior member of our Delegation having been obliged to leave the present Conference in order to attend the Danube Conference, which opens to-day at Paris, I find myself placed in the position of not having taken part in the deliberations of the Sub-Committee, and I therefore cannot at present take part in the discussion on this question following on the report of General Mance. I wish, therefore, to reserve the right of returning to it at the plenary meeting, when the Transit Convention, or the Convention on Navigable Waterways, comes up for discussion.

The CHAIRMAN (speaking in French). — The question is a very simple one, and M. Muller has considered it fully. I hope, therefore, that after some little reflection you will be in a position to take your decision. If this were a fundamental question, I should share your view, but M. Hanotaux has informed us that it is absolutely necessary for us to terminate our proceedings on Sunday. I must beg you to reflect and see whether you cannot come to a decision at once, either for or against.

Subject to this request, which I make to the Czecho-Slovak Delegate on behalf of the Committee, I wish to tender the thanks of the Committee to General Mance for his clear report.

M. KRBEK (Czecho-Slovakia; speaking in French). — I thought that delegations always had the right to bring up for discussion again at a plenary meeting any questions which had been provisionally decided here. Subject to this formal reservation, that I may if need be raise the question again in plenary session, I do not oppose the adoption of General Mance's Report, and of the article as presented by the Sub-Committee.

The CHAIRMAN (speaking in French). — You are right from a strictly legal point of view, but this question is one of degree, and the Committee as a whole desire you to come to a definite decision, in order that we may complete our labours rapidly and in the time allotted to us.

The Netherlands Delegate proposes to add to paragraph 2 of Article 7 after the words *in transit*, the words *after they have been declared and subjected to a summary inspection*.

M. LELY (Netherlands; speaking in French). — This question is of a technical nature, and I should like M. Laman de Vries to speak upon it.

M. LAMAN DE VRIES (Netherlands, speaking in French). — The Netherlands Delegation had supposed that the second paragraph of Article 7 contained the application of a principle which had already been adopted in Article 9 of the present Convention for the navigation of the Rhine. The essential feature of this principle is that the accuracy of a statement made by the master of a barge proceeding in transit shall be accepted without the usual customs verification, except as regards the precaution of sealing the vessel or placing it in the custody of a customs official. In view of this, our delegation did not attach much importance to the wording of the second paragraph, but now our eyes have been opened. On Saturday last M. Hostie gave us a very different explanation of the scope of the paragraph (1). According to him there is to be no statement by the master of the barge; when the master says that the vessel is in transit the hold will be sealed, padlocked or placed in the custody of a customs official, and that is all. This explanation is very important, and at the same time very disquieting for States through which traffic passes in transit. How are the customs officials of these States to watch over fiscal interests or even public safety when they do not know the nature of the goods which come from abroad, and which perhaps will not leave their territory at all? If it is known that a cargo is liable to heavy import duty, exceptional measures may be taken to prevent clandestine unloading. If it is known that a cargo consists of goods whose import is prohibited, they will be refused. If the true nature of a cargo is concealed under another name, the State may severely punish a false declaration. But if there is no declaration at all, nothing can be done. The hold will merely be sealed and it will not be known whether the seals will be respected.

I think the matter is quite clear. To abolish a declaration which has hitherto been universally required, would mean to deliver up the interests of a State, through which goods pass in transit, to the mercy of smugglers or persons who wish to gratify the demand of a country with goods which could not be imported openly. The breaking of seals will obviously become general, but if we do not know the nature and quantity of the goods unloaded, if we do not even know whether the breaking of the seal was a preliminary to a secret unloading or the result of an accident or some misunderstanding—that is the usual excuse—no severe punishment can be inflicted. Besides, what does the severe punishment matter if the result achieved by the act of contravention is much greater still?

For these reasons the Netherlands Delegation has the honour to propose the amendment which the Chairman has read. I may add that the system established by the Rhine Navigation Convention, which requires a simple declaration under the name of a *manifest*, does not present any difficulty for vessels on inland waterways. It is clear that without a summary inspection the declaration would not offer any guarantee.

Mr. H. O. MANCE (Great Britain). — The question was discussed at our meeting this morning, and it was pointed out that in a great many instances no such formalities were necessary; for that reason it was thought undesirable to indicate a formality which might encourage greater restrictions than those already in existence. That was the main reason why these words were omitted. The Sub-Committee thought that if we entered into these details we should involve ourselves in a host of complexities of administration, and that the expression was sufficiently flexible to admit of any reasonable sealing formalities. After all, a summary visit must be made in order to affix the seals. As regards the Rhine, the actual declaration will be provided for by the Act of Navigation. There is no reason why, on a particular river, any special administrative regulations should not be adopted, if they are in accordance with the spirit of our Convention. It is admittedly a point on which the article is not absolutely explicit, but we have to choose between leaving the matter open to a reasonable interpretation and introducing a restriction which does not exist on a large number of waterways to which the Convention would apply.

M. SEELIGER (Germany; speaking in French). — The problem raised by the Netherlands Delegate is of considerable importance. At the first session of the Elbe

(1) See pp. 118, 119, 120.

Commission we discussed this question at great length, and I will venture to make some observations on it now.

If I have understood aright, each vessel passing from one place to another ought always to have its manifest on board; the country through which it is passing can thus ascertain what goods it is carrying, whereas vessels in transit have no manifest. The State through which transit traffic passes is not allowed to know the nature of the goods transported by the vessel in transit, and it is from this that the whole difficulty arises. The seals of a vessel may have been broken. The State of transit may then have to ascertain whether the goods are still in the vessel or not, or whether they have been unloaded at any point,—in a word, whether there has been any fraud. At the time of the discussion of the Elbe draft, the question arose of compelling masters of vessels in transit to prepare a manifest. This obligation did not devolve upon the State through which the transit traffic passed or any authority appointed by this State, but on the State from which the vessel was proceeding, or—if, for example, it were an English vessel on the Rhine—its consular authority. In this way a manifest was always drawn up somewhere for each vessel in transit, and, should the customs seals be broken, the transit State has to ascertain whether the goods are on board and the master has the manifest, which he must produce. This clause has not been introduced into the Draft, but I think that it is in the Protocol, and that in the regulations of the Elbe this solution will be arrived at.

M. LAMAN DE VRIES (Netherlands; speaking in French). — The importance of this question is too great for any doubt to be allowed to remain, and it must be categorically expressed in the text of the Convention. Allow me to say also that the question does not refer to the form of the manifest, but to the quantity and nature of the goods which are actually in the vessel. What is wanted is a document guaranteeing that the vessel is in order. I therefore venture to press the adoption of my amendment.

M. BARRAIL (France; speaking in French). — After the clear explanation furnished by the German Delegate we all recognise that every individual navigation act must provide for a declaration and summary inspection. Why should we consider bad in a general convention what we consider good in various individual conventions? In these circumstances, though I do not wish to make this matter a question of principle which might divide us, I see no objection to our complying with the wishes of the Netherlands Delegate. In my capacity as an expert on customs questions, I must support him.—we belong to the same brotherhood. It cannot be said that customs questions are questions of detail; they are so to the lay mind, of course, but they have a very far-reaching influence on the economic interests of a country. I am therefore of opinion that we should support the claim of the Netherlands Delegate unless very strong objections of principle are raised to it.

M. PERIETZEANO (Roumania; speaking in French). — The amendment of the Netherlands Delegation appears to me a very natural one. We have every right to ask why transit by land routes is subject to certain rules and transit by other routes should be submitted to a totally different rule. According to Article 5 of the Transit Convention, a State is allowed to prevent the transit of a certain class of goods if these goods are prohibited, or if they are dangerous for the public welfare. When this principle was admitted in the Transit Convention it was understood that in whatever way it was desired to transport goods through a country, that country could in certain cases prevent it. Do you now want to allow any goods whatever to cross a country by river? Such goods might be pestiferous or anything else, but they could not be stopped so long as the contents of the vessel are allowed to remain unknown. It would be anomalous if the crossing of a country by water should thus bring with it certain exceptional powers which you would not acknowledge if the same goods were conveyed in a railway-truck.

I have heard two arguments adduced here, against which I venture to protest. The first was that this would complicate navigation, the second is that we are in a hurry. On this subject I venture to make a statement. I do not know whether we must finish

on Saturday or not, but so long as the interests of my country are at stake, I shall remain here, were it for the whole summer. I will never sacrifice the interests of my country merely in order to enable us to return home sooner. My second declaration is that I am very desirous that navigation formalities should be as simple as possible, so long as this simplicity is not obtained at the cost of the customs formalities of the countries crossed. If we say that a vessel may cross a country without making a declaration, it seems that we should be setting up two frontiers on the two banks of a river, and that each country must defend itself behind these frontiers because it does not know what there is in a vessel. It must rest content with a declaration by somebody of something. It is said that there will be no fraud because cargoes have been put under seal or padlocked. But you know quite well that seals are broken without its being noticed. The thief can only be caught red-handed, otherwise the vessel cannot be prevented from transporting whatever goods it pleases.

Do not compel the countries crossed by international routes to have two frontiers,—one a State frontier and the other running along the whole length of the banks of this international route; this would entail expenditure for the levying of customs dues and for frontier guards to prevent fraud, and this expenditure would be enormous. International rivers would end by becoming veritable calamities for the countries which they cross, and God has made them the opposite of this, primarily in the interest of the country, and then of those who visit and trade with it. To wish to cross a country without saying what there is in the vehicle, or, if it be by water, in the vessel, is to claim a right of ex-territoriality over that waterway, and this would be inadmissible. I am quite willing to authorise you to pass over rivers which cross my country, and even to enter the ports, but I have no intention of ceasing to be master on my own rivers. I have the right to ask you what you are transporting. I therefore consider not only that the proposal of the Netherlands Delegate is reasonable, but it would be difficult to argue otherwise.

M. HOSTIE (speaking in French). — I should like to find a solution which would enable us to save time, if only a quarter of an hour, in order to complete this Convention as soon as possible, because it is essential that the Convention should be made.

M. PERIETZEANO (Roumania; speaking in French). — That is not what is essential.

M. HOSTIE (speaking in French). — I am convinced that the majority of us will consider, as I do, that it is better to have a General Convention which may leave something to be desired on certain secondary points than to have no General Convention at all. I am making every effort to find something,—I do not flatter myself; it will be less satisfactory—but something which will be acceptable. I propose therefore to substitute for the words *will be limited...* to the words on the same subject in Article 334 of the Treaty of Versailles which served as a starting-point for the present text; they read as follows : *When the two banks of an international river are within the same State, goods in transit may be placed under seal or in the custody of customs agents.*

That would obviate the objections of the Netherlands Delegation, and if there is no observation to the contrary, I think the Committee might accept the proposal.

The CHAIRMAN (speaking in French). — The discussion is closed. We will take a decision on the text on which General Mance based his Report and which reads as follows :

ARTICLE 7

Transit, Customs Formalities.

(Text adopted by the Sub-Committee.)

As regards customs formalities, the transit of vessels, passengers and goods on waterways of international concern, shall be affected under the conditions established by the Convention on Freedom of Transit. In cases where transit takes place without transshipment, the following additional provisions shall be applicable :

When the two banks of a waterway of international concern are within the same State, the customs formalities on goods in transit will be limited to placing them under seal or padlock or in the custody of customs agents.

When a waterway of international concern forms the frontier between two States, vessels, passengers and goods passing in transit shall be exempt from all customs formalities except in those cases in which there are valid reasons of a practical nature for carrying out customs formalities in the part of the river which forms the frontier, but such formalities must not interfere with the facilities of navigation.

The dues provided for and authorised in Article 3 of the Convention on Freedom of Transit shall not apply to the transit of vessels, passengers and goods on waterways of international concern, it being understood that vessels in transit may be called upon to provide and bear the cost of the board and lodging of customs agents who may be strictly necessary for purposes of supervision.

I will put this text to the vote...

M. BARRAIL (France; speaking in French). — I presume that this does not raise the question of principle regarding changes in this text.

The CHAIRMAN (speaking in French). — No.

The Article was adopted, 29 voting for.

The CHAIRMAN (speaking in French). — As the Committee does not desire to take a decision on the text proposed by M. Hostie, I will put to the vote the Netherlands amendment, which consists of an addition to the second paragraph of Article 7 after the words *in transit*, of the words *...after they have been declared and subjected to a summary inspection*.

The amendment was adopted by 26 votes to 3.

ADOPTION OF PARAGRAPH 4 OF ARTICLE 8

We will now consider the fourth paragraph of Article 8, which, at the request of General Mance, was reserved.

Mr. H. O. MANCE (Great Britain). — The British Delegation has considered this question very carefully. I think we have found a text which meets the wishes of the various delegations who declared themselves in favour of the amendment, while at the same time it offers the smallest possible number of objections.

The text is as follows :—

The State under whose sovereignty or authority a port is situated may withdraw the benefits of the preceding paragraph from any vessel if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

The opinion of the British Delegation and also that of Sir Cecil Hurst, who was asked to examine this article, is that this text will meet the wishes of the Delegate of Uruguay better than his own text.

M. HOSTIE (speaking in French). — Of course we proposed this article subject to drafting amendments. My main object was to express the essential points.

The CHAIRMAN (speaking in French). — I will put to the vote the principle contained in this paragraph, subject to drafting amendments.

The paragraph was adopted in principle.

DISCUSSION OF ARTICLE 11

The CHAIRMAN (speaking in French). — We now begin the discussion of Article 11, which reads as follows :—

ARTICLE 11

River Commissions.

In the event of certain functions being entrusted by virtue of one of the special agreements or treaties referred to in the preceding article, to an International Commission composed of Representatives of States other than the riparian States of the international waterway, such a Commission shall, subject to the stipulations contained in Article 9, be inspired solely by the interests of navigation, and shall come under the category of the organisations provided for in Article 24 of the Covenant of the League of Nations. By this it is understood that it will exchange directly with the appropriate Organisation of the League of Nations any useful information, and will submit an annual report to the League of Nations.

The powers of the Commissions provided for in the preceding paragraph shall be determined by the Act of navigation of each waterway, and shall at least include the following :—

1. The Commission shall be entitled itself to draw up such navigation regulations as it thinks fit, and shall receive advice of all other navigation regulations;

2. It shall inspect or cause to be inspected periodically the whole course of the waterway, and shall inform the riparian States of any action which may be advisable for the upkeep of the works and the maintenance of good navigation conditions.

3. It shall be furnished by all the riparian States with official reports of all schemes for the improvement of the waterway.

4. Where the Act of navigation does not include special regulations for the levying of dues and charges, the Commission shall be entitled to approve the levying of dues and charges under the conditions prescribed in Article 6 of the present convention.

The Serb-Croat-Slovene Delegation has submitted the following amendment to this article :

In paragraph 2 omit the words : *shall inspect or cause to be inspected periodically the whole course of the waterway and...*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Our reason for suggesting this change—which is one of slight importance only—is that we fear that if this provision is maintained the exercise of authority will be impeded and State sovereignty infringed. We admit that the Commission has the right to inspect wherever it may desire, but we do not wish it to be placed in a position to demand, for example, that on a given day the authorities should be placed at its disposal to show it a depot, a port or a river-bank. This can be the more easily understood because when an international river forms the frontier between two States, there are on the banks, in addition to works intended to facilitate navigation, other works contributing to national defence. It is for this reason that we have proposed the omission in paragraph 2 of the words : *It shall inspect or cause to be inspected periodically the whole course of the waterway*. In order to obtain a more logical arrangement of the text, we propose that the Conference should change the order of the paragraphs by placing paragraph 3 in the place of paragraph 2. Paragraph 2 would read as follows :—*It shall be furnished by all the riparian States with official reports of all schemes for the improvement of the waterway* ; whilst paragraph 3 would read as follows :—*It shall inform the riparian States of any action which may be advisable for the upkeep of works and the maintenance of good navigation conditions*. Our grounds for this amendment appear to me to be logical and of a nature to allow of its adoption by the Committee.

The CHAIRMAN (speaking in French). — Does anyone wish to speak on the amendment submitted by the Serb-Croat-Slovene Delegation?

I put it to the vote.

The amendment was adopted, 14 voting for and 5 against.

I will now put to the vote the whole of Article 11 as altered by the adoption of this amendment.

Article 11 was adopted.

ADOPTION OF ARTICLES 12 AND 13

We pass to Articles 12 and 13, to which no amendments have been submitted. They will have to be modified in order to bring them into accord with the corresponding articles of the Transit Convention.

ARTICLE 12

Application of the Convention in Time of War.

The present Convention does not govern the rights and obligations of belligerents and of neutrals in time of war. With this reservation, the present Convention shall be valid in time of war in the measure compatible with these rights and these obligations.

ARTICLE 13

Relationship of the present obligations to the other obligations of the Members of the League of Nations.

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its rights and obligations as a Member of the League of Nations.

These articles were adopted, subject to final drafting.

DISCUSSION OF ARTICLE 14

The CHAIRMAN (speaking in French). — I will read Article 14.

ARTICLE 14

Vessels of War, etc.

It must be understood that, subject to any stipulation to the contrary contained in a special treaty or agreement concerning any given waterway, the navigation of vessels of war, or of those connected with the policing or administration of the river, or in general with the exercise of any public authority in the name of a sovereign State, is in no way affected by the present Convention.

There is a Serbian amendment to this article.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — This article has been generally understood to mean that the right of sovereignty of the State through whose territory the international river flows is in no way affected; but as it is not very clear, we ask leave to add the following words to the second paragraph :

Subject to any stipulation to the contrary, the passage of any naval force of a riparian or non-riparian State through the territorial waters of any other riparian State is only permitted with the special authorisation of the latter.

The words *territorial waters* refer to the international river. I beg the Committee to adopt our proposal; it seems to me perfectly clear. Otherwise it might appear that authorisation was given for vessels of war to pass along an international river. It must not be forgotten that internationalised rivers are not internationalised from the point of view of the right of ownership, but only from that of the right of passage of navigation. As the Brazilian Delegate very clearly said, it is not even a question of a servitude but of a simple right of passage.

Mr. M. O. MANCE (Great Britain). — I will draw attention to the fact that the restrictions in these various Conventions are of two categories,— one laying down that which may and that which may not be done, and the other stating the matters with which the Convention is not competent to deal. The present is one of the cases which

it seems very desirable to place in the second category, whereas if we adopt the suggestion of the Serbian Delegate, it seems to me that we are confusing the two categories. We say that this Convention has nothing whatever to do with the question of vessels of war, and then we include a stipulation applicable to the passage of vessels of war,—a subject which we have just said is outside our competence. The amendment does not seem to me very logical. If we have to choose between the two, I think we were on the right lines in the *Green Book* in saying that this Convention has nothing to do with the question of the passage of vessels of war; it neither authorises it nor prohibits it. The question is regulated by considerations which may be the subject of discussion by other bodies. That was the idea.

I propose that we omit the words *subject to any stipulation to the contrary contained in a special treaty or agreement concerning any given waterway*. I was asked to give a reason for the inclusion of this passage, and as I have been unable to do so, I think it had better be omitted.

M. MONTARROYOS (Brazil; speaking in French). — We are all agreed that Article 14 is obscure, and I propose a new text which shall not conflict with the fundamental idea of the article,—namely, that the Convention is not to modify anything in the rules of international law concerning legislation with regard to vessels of war.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Although unfortunately the text may not be clear, the idea, according to the Commentary in the *Green Book*, is to exclude from the Convention anything relating to vessels of war, except the rights already granted to various States for navigation on international rivers. But that is a question of drafting. I have myself proposed a text based on that of Article 14, to the effect that navigation of vessels of war is excluded from the domain of application of this Convention, and shall be regulated by special measures or treaties.

M. DETŒUF (France; speaking in French). — In principle, I am in agreement with the two last speakers, but I wish nevertheless to make an observation with regard to what has just been said,—that the navigation of these vessels shall be regulated by special agreements or treaties. It may not be necessary to pass special agreements or treaties to regulate what shall take place on each territory, I should therefore support a wording very similar to the one proposed; it might read as follows :

Subject to any stipulation to the contrary between the States concerned, the present Convention does not apply to vessels connected with the exercise of any public authority in the name of a sovereign State.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — No; we wish to exclude these vessels from our Convention.

M. DETŒUF (France; speaking in French). — We might say *does not apply* instead of *is in no way affected*.

M. MONTARROYOS (Brazil; speaking in French). — The text should be drafted after due reflection, and I propose that a sub-committee should meet, to include the French and British Delegates, and M. Avramovitch.

The CHAIRMAN (speaking in French). — I am happy to be in complete agreement with our Rapporteur, M. Montarroyos. It is a question of drafting. I propose accordingly the appointment of a small committee composed of M. Montarroyos, the author of the proposal, General Mance, M. Fernandez y Medina, M. Avramovitch and M. Detœuf.

Article 14 was referred to this Committee for drafting.

DISCUSSION OF ARTICLE 15

We will now embark upon the study of Article 15, which reads as follows :—

ARTICLE 15

Relations with States not adhering to the present Convention.

Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present Convention any agreement relating to navigation on an international waterway which would be contrary to the terms of the present Convention if concluded between High Contracting Parties.

M. KRBEČ (Czecho-Slovakia; speaking in French). — The same article appeared in the *Green Book* in the Convention on Transit, but the Transit Committee had adopted another text. Articles 10 and 11 of the Draft Convention on Transit were merged into one, and the following text was the result (1) :—

The High Contracting Parties further undertake not to conclude any conventions, treaties or agreements in future which might conflict with the terms of the present Convention unless it can be shown that there are geographical, economic or technical reasons which might, in exceptional cases, justify a departure from them.

This is a part of the present Article 10, and I think we should bear it in mind for the Convention on Waterways.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I think that the question of Article 15 of the Waterways Convention is quite different from that of Article 10 of the Transit Convention. The transit question necessitated a much more complex article, in view of the different field of application, and there is no reason to connect these two questions. We are dealing here with a much simpler case, and seeing that no amendment has been put in to this article, I think there is no reason to complicate matters, and that there are no grounds for not adopting Article 15 in its present form, or else perhaps slightly modifying it in order to complete a certain lack, and to reply to a question asked by the German Delegate at a previous meeting (2).

Article 15 in its present form states :—

Relations with States not adhering to the present Convention. — Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present Convention any agreement relating to navigation on an international waterway which would be contrary to the terms of the present Convention if concluded between High Contracting Parties.

But it does not say,—and this is a mistake, an omission,—it does not prevent the *de facto* violation, without the conclusion of any agreement, of the spirit of the Convention in favour of non-contracting parties.

This being so, I think that we might modify the text slightly and say :—

Each of the High Contracting Parties undertakes not to accord to a State which does not adhere to the present Convention, either in writing or in any other way, any treatment relating to navigation on an international waterway which would be contrary to the terms of the present Convention if concluded between High Contracting Parties.

This of course does not prejudice the question to be examined by the Sub-Committee on Article 1 with regard to classification of rivers and to regional considerations.

M. ALVAREZ (Chile; speaking in French). — I should like to point out to the Committee that Article 11 of the Convention on Transit contains the same provision

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 132.

(2) See p. 107.

under the same heading. There would therefore be every advantage in examining Article 15, the one now under discussion, in conjunction with Article 11 of the Transit Convention.

The CHAIRMAN (speaking in French). — It is quite evident that everyone is in agreement on the principle of the question. The wording must of course be brought into accord with that of the Draft Convention on Transit.

M. SEELIGER (Germany; speaking in French). — M. Haas has alluded to a remark which I made a few days ago to the effect that a clause concerning the most favoured nation should be inserted in Article 2. I do not know whether in the text proposed this clause is provided for. It seems to me that some sort of favourable treatment in respect of navigation might very easily be granted to a State which has not acceded to this Convention; this would at present be contrary to the terms of the Convention.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I think, if I understand aright, that my text would meet this case. Between Contracting Parties there is a principle of equality,—a principle which also applies the greater facilities mentioned in Article 17. I do not think that with that text a non-contracting country can ever be more favoured than a contracting one.

M. SEELIGER (Germany; speaking in French). — If that is the meaning of the word *licite*, I agree.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — That is so.

M. DETOEUF (France; speaking in French). — It would be better to say *no agreement which would be contrary to the provisions of the present Convention*.

M. Robert HAAS (Secretary-General of the Conference, speaking in French). — We might adopt the following text, subject to the approval of the Drafting Committee, and to amalgamation if need be with another article :—

Each of the High Contracting Parties undertakes not to accord to a State which does not adhere to the present Convention, either by agreement or in any other manner, any treatment which would be contrary to the provisions of the present Convention if concluded between High Contracting Parties.

The CHAIRMAN (speaking in French). — I propose to refer this text to the Drafting Committee.

It was decided to refer the text to the Drafting Committee.

DISCUSSION OF NEW ARTICLES PROPOSED BY THE ITALIAN AND NETHERLANDS DELEGATIONS

The CHAIRMAN (speaking in French). — We now have to examine the amendments proposed by the Netherlands and Italian Delegations. I will read them.

New article proposed by the Italian Delegation :

ARTICLE 15 (a)

Sphere of application of the Convention.

Exceptions may be made in special cases to the terms of the preceding articles in virtue of special or general measures which one of the High Contracting Parties may be obliged to take in case of grave events affecting the safety of the State or the vital interests of the country,

it being understood that the principle of freedom of navigation should be observed as far as possible.

New article proposed by the Netherlands Delegation :—

ARTICLE 15 (a)

Scope of Application of the Convention.

The present Convention shall not be taken as affecting in any way measures for national security which each of the High Contracting Parties reserves to itself the right of taking on its own territory in case of grave events affecting the safety of the State; it being nevertheless understood that the principle of freedom of navigation shall be maintained as far as possible.

M. VALENTINI (Italy; speaking in French). — The Italian Delegation submits a proposal identical with that made by the Netherlands Delegation. In the Convention on Freedom of Transit (1) an Article 7 has been inserted, which reads as follows :—

Scope of Application of the Convention.

Exceptions may be made in special cases to the terms of the preceding articles in virtue of special or general measures which any one of the High Contracting Parties may be obliged to take in case of emergency affecting the vital interests of the country, it being understood that the principle...

In that Convention the words were *of freedom of transit*; here we might say *of freedom of navigation*.

... Shall be observed as far as possible.

The Italian Delegation is of opinion that a similar condition should be inserted in the Convention on Navigable Waterways. I therefore ask the Committee to be good enough to consider whether it will make this addition, and also where it should be inserted. It might possibly be placed after Article 15; but that is a matter of secondary importance. In our view the Committee must first decide as to the principle of the addition proposed by the Italian Delegation.

The CHAIRMAN (speaking in French). — The proposal made to us seems very clear. Article 7 of the Convention on Transit makes provision for very similar cases. It seems to me that there is no reason why the same article should not be inserted in the Convention on Navigable Waterways. At first sight it appears to me that the Netherlands and Italian Delegations have filled a lacuna.

M. LELY (Netherlands; speaking in French). — The Netherlands amendment has been proposed as a provisional text. Now that Article 7 of the Convention on Transit has been modified, the text of the Italian Delegation has become the best, and we withdraw our amendment in its favour.

M. ALVAREZ (Chile; speaking in French). — Does the proposal of the Italian Delegation consist in inserting in the Convention on Navigable Waterways an Article similar to Article 7 on Transit?

M. VALENTINI (Italy; speaking in French). — Yes.

M. ALVAREZ (Chile; speaking in French). — Then I accept it.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — This proposal completely changes the whole regime of navigable waterways in certain special circumstances. It is not possible to give an opinion on such a grave question at this

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 90.

meeting. It must be examined dispassionately, and I therefore ask that it be postponed until tomorrow.

M. VALENTINI (Italy; speaking in French). — I should like to point out to the Delegate of Uruguay that since free transit includes all routes and ways, I do not understand what difference he wishes to establish.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — The Convention on Transit excludes navigation on international waterways. You see therefore that there are exceptions.

M. VALENTINI (Italy; speaking in French). — It seems to me that logically the provision which has been inserted in the Convention on Freedom of Transit should be inserted in the Convention on Navigable Waterways. It is surely the same thing.

The CHAIRMAN (speaking in French). — Your view is quite arguable, but what M. Fernandez y Medina meant was that the fact that we are considering international navigable waterways separately, independently of the Convention on Transit in general, is the most striking proof that a distinction may be drawn between transit on international navigable waterways and transit by other means. This argument also deserves consideration.

In deference to the Delegate of Uruguay, I propose to the Committee to postpone the consideration of this question until our meeting tomorrow.

M. BIGNAMI (Italy; speaking in French). — There are several provisions here which in certain cases could not be applied,—for example, that which refers to the use of ports. Article 8 of the *Green Book* reads :—

The equipment of ports situated on an international waterway and the facilities granted to navigation in those ports shall be available for public use to such reasonable degree as corresponds with the free and effective practice of navigation.

Suppose that a nation needs to construct a fortress. That falls under the “vital interests” of the country. I do not know whether the Delegate of Uruguay recalls the discussion which we had in connection with the Convention on Freedom of Transit when we spoke of *the necessity for national defence* (1). The French Delegation pointed out that a much more general expression would need to be employed, namely *the vital interests of a country*. We thought, therefore, that, in order to protect the independence of a country, for example, it could suspend for a time both navigation and free entry into a port. In certain contingencies a nation may be bound to withdraw from the scope of application of the Convention. For instance, it may be necessary for it that, for a certain time, ships other than its own should not pass near a fortress situated on a navigable waterway. For this reason we considered that a provision of a general character should be introduced such as we have proposed.

We may postpone the decision until to-morrow, but I should like to call the attention of the Committee to the fact that in these quite exceptional and temporary cases, and subject to the limitation contained in the last line of our proposal, the Convention should allow States a certain latitude.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — This restriction was not foreseen at the time when the Draft Conference which we are now considering was drawn up. It is presented as a simple matter, but I do not think it is. The words *special exceptions may be made to the terms of the preceding articles* should be examined carefully. What are the preceding articles? The whole Convention. Moreover, we are most probably in entire agreement, for I do not wish to impose any restriction on the defence of the vital interests of a country,—quite the contrary. But it seems to me logical to ascertain to which articles this restriction should refer.

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 86.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We are in full agreement with the Italian Delegation as regards the principle. As regards procedure, as the Chairman proposes, in order to take into account the remarks of the Delegate of Uruguay, who, if I am not mistaken, said (1) that the Convention on Transit does not refer to navigable waterways...

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I said that there were in the Convention on Navigable Waterways provisions regarding transit which are not in the other Convention.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Yes, but in the Transit Convention they are more comprehensive provisions, and it is even explicitly stated that they refer to transit by water and rail.

M. PIERRARD (Belgium; speaking in French). — I wonder whether the proposal which we are now considering is not covered in part by Article 5, which reads as follows:—

On the waterways provided for in Article 1 and situated under its sovereignty or authority, each of the High Contracting Parties reserves to itself all existing rights of issuing regulations and of taking the necessary measures for the general policing of the country...

M. BIGNAMI (Italy; speaking in French). — This article refers to administrative measures, and where administrative measures are concerned it cannot be admitted that anyone should contravene the principles of the Convention. We admit that, in certain circumstances, any country may suspend the application of this Convention. We therefore find it necessary, in quite exceptional circumstances, to authorise such suspension. These are two entirely different questions.

M. PIERRARD (Belgium; speaking in French). — Article 5 also refers to general policing.

M. BIGNAMI (Italy; speaking in French). — It is not only a question of general policing; there may also be the safety of the State and vital interests.

M. PIERRARD (Belgium; speaking in French). — It should be quite understood that these measures would not affect provisions derived from individual acts concluded between countries.

M. HAAS (Secretary-General; speaking in French). — That is stated in Article 17.

M. PIERRARD (Belgium; speaking in French). — We have not yet come to Article 17, which reads as follows:—

The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of still greater facilities granted for freedom of navigation, such, for instance, as the abolition of all dues and charges...

It seems to me that Article 17, even in virtue of this enumeration, appears to apply exclusively to dues.

M. HOSTIE (speaking in French). — Not all at. Article 17 covers the whole Convention.

M. DETOEUF (France; speaking in French). — As the Delegate of Uruguay has pointed out, the circumstances of transit in general and of transit on international navigable waterways, are not absolutely identical. Even if the two articles proposed appear to be identical, there is certainly a difference which arises from the words of the preceding articles. These preceding articles are not the same in the Convention

(1) See previous page.

on Transit as in the present Convention. If we succeed in defining the scope of this clause, it might perhaps be possible to determine to which of these articles it may on occasion apply. It cannot apply to the whole Convention, —its application might considerably interfere with the working of it.

If, in view of certain examples, we were to consider that exceptions may be admitted in respect of certain articles and in exceptional circumstances, it would be logical to insert a clause to this effect in the Convention. But it seems to me that a thorough investigation should be made in order to determine article by article what may be made the subject of exceptions and what may not.

M. VALLOTTON (Switzerland; speaking in French). — Allow me to draw your attention to the special situation of landlocked States,—a situation to which I beg the Italian Delegation to give its attention. From this point of view there exists a very marked difference between the Convention on Transit and that on Navigable Waterways. When a State interrupts traffic on a railway, for the reasons indicated by the Italian Delegation, it is possible in most cases to deflect the traffic along another route. On a navigable waterway the situation is different, when it is a question of a landlocked State which has only one way of access to the sea. If you admit measures such as this in this Convention, you extend the restrictions imposed upon the very existence of the landlocked State on the only way of access to the sea which it possesses. I beg the Italian Delegation to consider this situation and to examine whether it could not see its way to withdraw its proposal.

None of us denies the perfectly legitimate interests which may be pleaded by the Italian Delegation, but I do not think that any State would be capable of placing difficulties in the path of its neighbours when there arise necessities which must be recognised by all.

M. BIGNAMI (Italy; speaking in French). — We proposed a clause of this kind in the Convention on Transit, but I should like to point out to the French Delegation that in that Convention there are certain articles to which this provision does not apply. It does not apply, for example, to dues and charges, nor does it apply to disputes. These are articles the application of which must be suspended in certain special circumstances. If the French Delegation wishes to specify these articles, I do not object.

In regard to the observations of the Delegate of Switzerland, I must point out that in the Transit Convention the article was drafted in such a way that if nations, in order to safeguard their vital interests, wish to prevent the passage, in quite temporary and exceptional circumstances, of anything sent to a landlocked State, this landlocked State will no longer have the means of receiving from the sea by that route what it requires. This objection should have been raised when the Transit Convention was discussed, but as we inserted this provision, why should we not insert it in the Waterways Convention?

We must remember that a country cannot neglect the defence of its frontiers. This is especially true of countries such as Italy, which for a century have been struggling for freedom. The last war was a terrible one; it caused the death of ten million soldiers. A country must be in a position to protect itself. Italy has proposed general disarmament. Let it come! We shall rejoice. But until then nations who have struggled for their freedom cannot possibly be asked not to protect themselves against the most terrible things in the world,—war and invasion. We must therefore urge, for reasons of logic and also for reasons of a higher order, that an article such as the one which we propose be inserted in the Convention. I do not press for the debate to be continued now. We can resume it tomorrow, but I cannot withdraw this article, which in my opinion is fundamental in a Convention such as that which we are preparing.

Mr. H. O. MANCE (Great Britain). — I think we might arrive at a decision on this point. I would suggest that, in view of the discussion which took place in the Plenary Transit Committee, we can safely allow Article 7 of the Transit Convention to be inserted in the Waterways Convention. It will be remembered that at the time the British Delegate pointed out that the articles dealt simultaneously with two different principles,—freedom of communications and transit, and national security. It is

impossible to lay down any specific relation between these two principles in a Convention. It was agreed that, in the event of a menace to national security in the form mentioned here, it was for the State to decide, so far as this Convention was concerned, what constituted such menace. The following text: ... *it being nevertheless understood that the principle of freedom of transit shall be maintained as far as possible* (1), was unanimously accepted.

The same or similar words would, I presume, be inserted in this Convention. You will remember also that the British Delegate pointed out that this gave an opportunity of bringing any unjustifiable use of the provisions of this Article before the competent jurisdiction in order to ascertain, not whether a menace to the State really existed, but whether the restrictions which were being imposed were necessary to cope with such menace or not. In other words, the British Delegate pointed out that in agreeing to this addition we had expressly provided that there could be an appeal to the jurisdiction of the League of Nations. I think that that is a very important safeguard, and that in view of it we should be quite safe in accepting this article, which really only endeavours to maintain, together with the principle of self-preservation or national defence, the principle of freedom of communications.

M. ALVAREZ (Chile; speaking in French). — I am in complete agreement with Mr. Mance.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I also agree as regards principle, but I am doubtful whether all the articles of the Convention would not be cancelled if we place this article at the end.

M. VALLOTTON (Switzerland; speaking in French). — I should like to draw your attention to the gravity of this question. We are dealing with time of peace and not of war, and I beg M. Bignami not to forget this. In time of peace a downstream State would have the right to deflect the waters of a river giving access to the sea to the detriment of any State situated upstream, under the pretext of increasing the defences of a fortress.

M. BIGNAMI (Italy; speaking in French). — No, I simply meant that if a country were to build a fortress, it might be necessary to suspend navigation for some time on the watercourse at the spot where this fortress was being built, or to limit it to the required extent. But we have a corrective for this; we say that we will submit it to the jurisdiction of the League of Nations. Moreover, I think that all these precautions are not justified; at bottom the interest of nations is always to allow passage to other nations as far as possible.

Even for purposes of national defence, it is still in the interests of my own nation to limit all hindrance to navigation to what is strictly necessary. I therefore urge that this most logical article be inserted,—the more so as we have already adopted it in respect of transit.

M. ALVAREZ (Chile; speaking in French). — There is obviously a conflict between the interests of a State whose navigation is impeded and those of the downstream State. These interests should be accorded equal respect. Who is to settle this conflict? The League of Nations. The principle thus established presents no difficulty, as far as I can see. We must not lay it down as a principle that the rights of the landlocked State should, as the Swiss Delegate claims, take precedence of the rights of the other State, but the contrary is equally inadmissible.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — These claims must obviously be reconciled. Each has his own point of view.

Mr. H. O. MANCE (Great Britain). — I think, if I may add a suggestion, that we might place this article after Article 9.

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 85.

M. BARRAIL (France; speaking in French). — I think we must investigate carefully where this article should be placed and to which articles it should apply.

M. REINHARDT (Austria; speaking in French). — I support the appeal which the Swiss Delegation has made to the Italian Delegation, asking the latter to take into consideration the exceptional case of landlocked States. I ask the Committee to investigate this case carefully, because I think it calls for close consideration.

The CHAIRMAN (speaking in French). — There is still another side of the question which has not been settled. We cannot refer all to the Drafting Committee, but I propose that a Sub-Committee be formed to put these matters in order. This Sub-Committee might be composed of MM. Reinhardt, Fernandez y Medina, Alvarez, General Mance, MM. Detœuf and Bignami. Thus all opinions would be represented on it.

M. TSANG-OU (China; speaking in French). — It might also deal with frontier rivers.

The meeting adjourned at 7.55 p.m.

NINTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Thursday, April 7, 1921, at 4 p.m.)

RECTIFICATION OF A VOTE—REPORT OF SUB-COMMITTEE APPOINTED TO DRAFT NEW ARTICLE 15 (a)
— POSTPONEMENT OF DISCUSSION OF ARTICLES 16 AND 17 — ADOPTION OF ARTICLE 18 —
DISCUSSION OF ARTICLE 19 — ALTERATION IN ARTICLE 18 — REFERENCE TO THE DRAFTING
COMMITTEE OF ARTICLE 20 AND FOLLOWING ARTICLES — ADOPTION OF NEW ARTICLE 15 (a)
— DISCUSSION OF ARTICLE 17 — DISCUSSION OF ARTICLE 16.

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

RECTIFICATION OF A VOTE

The CHAIRMAN (speaking in French). — I have received from M. Pierrard the following letter :—

DEAR MR. CHAIRMAN,

In the course of the last meeting of the Committee on Navigable Waterways, held on Tuesday, April 5th, at the time of the discussion of the amendment to Article 7 suggested by the Netherlands Delegation, in the form in which that Article had been adopted by the Sub-Committee of which I was a member (1), my attention was for a moment distracted by other matters, when I was taken unawares by the voting. Being under the impression that it was the text submitted by M. Hostie upon which the vote was being taken, I voted for, whereas, as I realised afterwards, the vote was really on the Netherlands amendment. This was a notable mistake on my part, and I should be greatly obliged if you would have it recorded in the record of the meeting. The amendment was thus adopted by 25 votes to 4.

I have the honour to be, etc...

This is a distinct mistake; it will be corrected.

REPORT OF SUB-COMMITTEE APPOINTED TO DRAFT NEW ARTICLE 15 (a)

The CHAIRMAN (speaking in French). — You will remember (2) that a sub-committee composed of the Netherlands and Italian Delegates and the representatives of some other interested nations, was formed with a view to presenting us today with a draft Article 15 (a).

M. BIGNAMI (Italy; speaking in French). — I will relinquish my right to speak, in favour of M. Reinhardt. He drafted a text which was accepted by several delegations.

M. REINHARDT (Austria; speaking in French). — I will venture to submit the following text, which I hope will obtain the support of the representative of Italy :—

ARTICLE 15 (a)

Exceptions may be made in special cases, and for as short a period as possible, to the terms of the preceding articles in virtue of special or general measures which any of the High Con-

(1) See p. 173.

(2) See previous page.

tracting Parties might consider indispensable for the safety of the State or in the vital interests of the countries, which would otherwise be seriously impaired, it being understood that the principle of freedom of navigation, and *especially of communication between the States situated upstream and the sea*, should, as far as possible, be observed.

M. VALLOTTON (Switzerland; speaking in French). — I regret to have to prolong the discussion, but I must once more register Switzerland's protest against the introduction of this principle. According to the terms of this text, a State situated downstream is not prohibited from depriving an upstream State from access to the sea; and yet it is a question of life and death for a landlocked State. When transit is in question it is always possible to substitute some other route for a railway, but here an interruption may involve a complete stoppage of the food supplies of the country.

M. BIGNAMI (Italy; speaking in French). — I am a conciliatory person and generally I find that my suggestions are accepted, but it is with the greater regret that I always find an adversary in M. Vallotton.

As regards navigation, the countries most directly interested in navigation are those whose vessels pass up the rivers from the sea,—it is for these countries to protest, and not for landlocked countries; but the last words of the text submitted to you introduce a very great limitation into this article,—a limitation which applies to cases of quite an exceptional nature and which lays down that communications between the upper reaches of a river and the sea shall be maintained as far as possible. If it is just that an upstream State should strive to live, it is equally just for downstream States to try to defend themselves. Does M. Vallotton want downstream States to be no longer in a position to ensure their safety? There are countries which were fortunate enough not to fight, but there are others who bore the burden of terrible wars, and a little consideration must be allowed for them. I second M. Reinhardt's proposal.

M. VALLOTTON (Switzerland; speaking in French). — The Rhine Convention contains nothing of this kind, and we would never allow an alteration in it to be made in this direction. We are not dealing here with war but with peace, and such measures cannot be introduced for times of peace.

M. PIERRARD (Belgium; speaking in French). — When the Italian amendment was submitted to the Sub-Committee, I asked my esteemed colleague and friend, M. Bignami, to withdraw it, and he was not surprised at this, in view of the attitude I had adopted at the beginning of the Conference. But as I realised that our colleague's opposition was to a certain extent irreconcilable, I did not press my view. I am quite prepared to support the Austrian amendment, and I thank M. Bignami for having been good enough to acquiesce in it.

M. DETŒUF (France; speaking in French). — I have not the new text before me, but judging from my impression when it was read, I am wondering whether some error has not occurred, because this amendment appears to me more restrictive than the text proposed by M. Bignami. In this latter text (which was indeed none other than that in the Transit Convention), it was laid down that only in case of emergency could a limitation or restriction of navigation take place,—an emergency affecting the safety of the State or the vital interests of the country. The point of view is now somewhat wider; whenever a State considers its safety to be concerned or its vital interests at stake, to any undefined extent, it may take measures which hinder free navigation. I think that this text is much more restrictive than the original text, and I ask you to reflect again before voting for such a text, which seems to me not so much a compromise as a more drastic measure.

M. BIGNAMI (Italy; speaking in French). — I should like to point out to M. Detœuf that the text of this article cannot be understood unless the records are read. Before your arrival we had very long discussions on the Transit Convention. In the

course of these discussions it was the Italian Delegation which maintained (1) that in exceptional cases (and national defence is one of these) a State should be allowed to prohibit transit, and in particular I spoke of national defence in time of peace, when everything is regular and normal. You will see in the records a statement by M. Serruys made after he had read the article in question. I then joined in the debate. The question had been raised partly by the Italian and partly by the French Delegation, the latter demanding a wording of a rather more general nature than ours. The French Delegation spoke of *vital interests*; we spoke merely of *national defence*. The wider interpretation was adopted. When M. Serruys had finished reading his text, I pointed out that we were dealing with national defence even in time of peace. M. Serruys replied that he agreed, and the Chairman replied *Certainly*. In any case you will find all these speeches in the records (2).

If you consult the exact text of the article in the Transit Convention you will find an error in the text : the word *for*.

As regards emergencies, demands of a special nature made by the General Staff of any State whatever may be considered as included under these. In my view the only interpretation which can be given is that based upon a text such as that of M. Reinhardt.

M. HOSTIE (speaking in French). — For my part I think there can be no hesitation as regards what should be done, since in the matter of international waterways, all the Delegations appear to me clearly desirous of establishing a regime which shall be at least equal to the regime provided for transit, and many of them would prefer an even more favourable one. An attempt has been made to effect a compromise. This is evident in the text, as a result of the additions which have been made to it. But on one point, as a result of an inadvertent error, this text happens to be less favourable to free navigation than the text of the Italian amendment. This latter amendment spoke clearly and formally of *grave events*, but the present text makes no mention of them. Obviously this text must be completed by taking the text of the Italian amendment and inserting in it the restrictions intended to further free navigation which are italicised in M. Reinhardt's amendment. Otherwise there is only one thing to be done, and that is clearly to abandon the whole question and leave the Convention as it is.

I will read you the text which was proposed by the Italian Delegation...

M. BIGNAMI (Italy; speaking in French). — There is an error even in that text.

M. HOSTIE (speaking in French). — It is the text of the Transit Convention; we cannot begin to discuss the Transit Convention here.

M. BIGNAMI (Italy; speaking in French). — We shall ask for it to be corrected. If you will consult the records of that meeting you will at once see the mistake to which I refer.

M. HOSTIE (speaking in French). — It may be that there was a misunderstanding when the vote was taken,—that your opinion was different from that of the rest of the meeting. We cannot begin here to correct the transit texts.

M. BIGNAMI (Italy; speaking in French). — The Plenary Committee decided that.

M. HOSTIE (speaking in French). — The text passed by the meeting for the Transit Convention and repeated here by the Italian Delegation, was as follows :—

...measures which one of the High Contracting Parties may be obliged to take in case of emergency affecting the safety of the State or the vital interests of the country...

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 86.

(2) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 90:

We now read :—

...measures which one of the High Contracting Parties might consider indispensable for the safety of the State or in the vital interests of the country...

This text must be amended. We may for instance retain the words proposed by M. Reinhardt :—... *interests of the country which would otherwise be seriously impaired, ... especially of communication between the States situated upstream and the sea.*

These additions may be made to the original Italian amendment; that would be in conformity with the spirit of the Convention. But I think it is absolutely impossible to revoke here what has been done in regard to transit.

M. KRBEC (Czecho-Slovakia; speaking in French). — I entirely support the view of the French Delegate. As the question is of great importance to certain countries, I ask that the text be examined before a vote is taken.

Mr. H. O. MANCE (Great Britain). — At the meeting at which this article was adopted for the Transit Convention, we arrived at a text after a very satisfactory discussion; but this text, in its final form, does not make it absolutely clear that the requirement of the Italian Delegate is met; in order not to modify a text which was otherwise considered a very good one, the Plenary Transit Committee decided to insert a special reference in the Report, to the effect that the article also referred to the interests of national defence *in time of peace*. As Assistant-Rapporteur, I was entrusted with the preparation of that part of the Report, and I can assure M. Bignami that this passage really was inserted. That being so, I think the Italian Delegate can quite safely accept M. Hostie's proposal.

M. BIGNAMI (Italy; speaking in French). — This interpretation will have to be included in the Report. For my part, however, I consider that it would be much easier to add the word *for*. It is understood that the Report on Navigable Waterways must contain the same interpretation, which is made quite clear in the records.

M. VALLOTTON (Switzerland; speaking in French). — The records will also contain the protests of landlocked countries.

M. KRBEC (Czecho-Slovakia; speaking in French). — Before giving my opinion I again ask for the text to be examined.

M. DETCEUF (France; speaking in French). — I desire to state that so long as the text does not go further than that of the Transit Convention, I will support the proposal of the Italian Delegation, with a mention in the records as indicated.

M. PIERRARD (Belgium; speaking in French). — I think that is the intention of all who have spoken here.

M. VALLOTTON (Switzerland; speaking in French). — Obviously the records cannot last a hundred years, and we must have a text (1).

POSTPONEMENT OF DISCUSSION OF ARTICLES 16 AND 17

The CHAIRMAN (speaking in French). — While M. Reinhardt's text is being distributed we will consider Article 16, but as it raises questions which are connected with other very important provisions I ask your permission to reserve it and also Article 17 and to pass on to Article 18.

(1) For continuation of discussion see p. 194.

ADOPTION OF ARTICLE 18

The CHAIRMAN (speaking in French). — Does anyone wish to speak on Article 18? I put it to the vote subject to final drafting.

Article 18 was adopted in principle.

DISCUSSION OF ARTICLE 19

The CHAIRMAN (speaking in French). — I will read Article 19.

ARTICLE 19

Settlement of Disputes.

In the absence of any direct agreement between the parties concerned, any disputes as to the interpretation and application of the present Convention shall be brought in the first instance before the International Commission referred to in Article 11, if such exists for the waterway in question. Should no such International Commission exist, or should its decisions prove unacceptable to any one of the States, any interested State may bring the matter before the Permanent Communications and Transit Committee of the League of Nations, and may ultimately appeal, within such period as may be prescribed, to the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations, dated... and in the Scheme for the Organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee, adopted by the General Communications and Transit Conference on...

These disputes shall, in cases of urgency, be accorded an accelerated procedure, the International Commission, the Permanent Communications and Transit Committee and the Permanent Court of International Justice, having the power, without prejudice to the final conclusions, opinion and judgment on the basic cause of dispute, of pronouncing a provisional conclusion, opinion and judgment to the extent of prescribing any provisional measures designed in particular to restore to navigation the facilities which existed before the act or occurrence which give rise to the dispute.

The present Article does not preclude the settlement of disputes either by arbitration or by any other means, in virtue of special conventions between interested States, except as regards waterways which are subject to the jurisdiction of the International Commissions referred to in Article 11.

I think that this article is common to all the Conventions. The British Delegation has submitted an amendment to substitute for this article the following text :—

Unless otherwise agreed between the parties, any dispute between Participating States with regard to the interpretation or operation of this Convention, for the final settlement of which no provision is made in any other Convention or Act of Navigation by which both States are bound, shall, on the application of either party, be determined by the League of Nations, whose decision shall be binding, including any interim decision which may be given by the League for restoring the facilities for navigation which existed before the act or occurrence which gave rise to the dispute.

M. ALVAREZ (Chile; speaking in French). — I have two comments to make on this article. In the first place it refers disputes to the Advisory and Technical Committee on Communications, whereas according to the final rules of organisation, the powers of this Committee in this matter have been abolished. Secondly, I wish to observe that an attempt has been made in this article to establish two degrees of jurisdiction,—a first instance, and then a second suit, a kind of appeal, before the Permanent Court of International Justice. But in international matters, all litigation, no matter how difficult and complicated, is usually limited to one degree of legal procedure. Why should we depart from this custom now? I propose to refer this article to a Committee, to consider whether one jurisdiction or two ought to be established, and to bring such jurisdiction in accordance with the provisions of the Advisory and Technical Committee on Communications.

The CHAIRMAN (speaking in French). — Before calling on the various members who have asked leave to speak, I venture to draw the attention of the Committee to Article 15 of the Transit Convention, which we have drawn up (1). As we are dealing at this moment with the settlement of disputes, it seems to me at first sight that we might base ourselves on the principle of this Article 15. We might consider at the same time whether there are any points which are not common to both, seeing that we are now occupied with navigable waterways. The intention of the author of the *Green Book* was undoubtedly to treat all these questions of jurisdiction in the same manner, whether in regard to transit or to navigable waterways. As the Conference has determined the jurisdiction for the settlement of disputes, it seems to me that, in principle, we might adopt this method of procedure.

Mr. H. O. MANCE (Great Britain). — I think we all agree that this Article 19 must conform in principle to Article 15 of the Transit Convention. The whole structure of the article regarding disputes in the Rules of Organisation is identical with that of the articles before us. The question has already been decided. There is one difference, however, and that is that for international rivers there may be organisations specially qualified to deal either in the first instance or finally with certain disputes. I think that M. Alvarez is perhaps justified in complaining that we had gone too far into detail and laid down too definite a procedure in Article 19. I would therefore draw attention to the amendment of the British Delegation, which attempted to meet what I imagine was the point in M. Alvarez's mind by a text which was drawn up before the final text of the Convention on Freedom of Transit was adopted. We propose to add to the first paragraph of the article the words *for the final settlement of which no provision is made in any other Convention or Act of Navigation by which both States are bound*. I would ask whether that suggestion meets with the approval of the Committee. I would point out that the British amendment leaves it quite open for a procedure to be established by an act of navigation if desired, for settling disputes in the first instance or finally. It does not compel them to do so; but it recognises that they may do so.

M. HOSTIE (speaking in French). — Like General Mance, I think that there is only one point here to be discussed,—that of disputes which might first of all be brought before an international commission in virtue of an act of navigation. Apart from this I see nothing in this question which distinguishes it from the corresponding circumstances in the Transit Convention; and as we have already accepted it at Paris, I think we should simply adopt here the Transit Convention text. There remains the case in which a navigation act may have established a special regime. If the navigation act has been signed by both parties to the dispute, the matter is still very simple. We find ourselves in the same position as we should be in the case of a general arbitration clause, namely, that if the navigation act states that all disputes or certain disputes shall, in the last instance, be settled by the international commission, it is clear that this navigation act binds both parties. If, on the contrary, only one party took part in the navigation act, we are faced with a difficulty, and I see only one method of solving it,—to apply in such circumstances the general principle which we have established for transit.

I therefore propose the following system :—Adoption of the text which relates to Transit, but with a change based on the British text. We should then have the following text :

In the absence of any direct agreement between the parties, and subject to contrary provisions in an act of navigation by which the States parties to the dispute are bound, any disputes as to the interpretation or application of the present Convention, shall be brought before the Permanent Court of International Justice...

Mr. H. O. MANCE (Great Britain). — That is the same thing.

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 299.

M. SEELIGER (Germany; speaking in French). — I will consider the matter from the point of view of those international waterways which are administered by an international commission. There are cases in which the first decision of the international commission is essentially of an administrative nature, and in which it is not possible to speak of a judicial decision. But it is possible that even here a State may not accept this decision. It is not therefore for the international commission to settle the dispute, but first of all to take an administrative decision. It is, however, possible that a State may consider its most vital interests to be affected, and for this reason I think that we must provide for the possibility of an appeal to a higher jurisdiction which will give a final decision.

When we spoke of works, I suggested to you in the Sub-Committee a higher jurisdiction than that of the international commission composed of representatives of the States. Allow me to return to this point for a few moments and give an example. The international commission considers the question of certain works, and finally decides that they are to be carried out on the territory of a State. The State objects. The international commission has decided that the work must be done. There is no question here of a settlement of a dispute, but of an administrative decision. It is not the judgment of a court of first instance; it is a decision which the commission has had to take in the ordinary course of its administration. Other cases might certainly be cited.

We must therefore have an independent and impartial jurisdiction composed not only of the States members of the commission but also of other States. All the States which have representatives on the international commission have their own interests. The commission must contain States which are not interested, and which are capable of giving a more impartial decision.

In many cases, contrary to M. Alvarez' opinion, a single jurisdiction is not sufficient. For the settlement of questions of great importance which are submitted to the international commission, the independent and impartial jurisdiction to which I have referred would have to be established.

M. HOSTIE (speaking in French). — I gather from M. Seeliger's remarks that he is in agreement with my proposal to maintain the appeal to the Permanent Court, with preliminary efforts at conciliation in all cases, both when one of the two parties is not a signatory of the navigation act and also when both parties are signatories, unless the navigation act has deprived the parties of this right of appeal. In other words, the text which I propose does not prejudge the question, but, unless special provision to the contrary exists in the navigation act, signatory parties cannot be deprived of this right of appeal.

M. SEELIGER (Germany; speaking in French). — As this is a general Convention which is to prevail and which, in accordance with the Treaties of Peace themselves, is to take the place of the general principles contained in navigation acts, a general principle is necessary, establishing in such cases an independent jurisdiction without any restriction.

M. DETOEUF (France; speaking in French). — Article 15 of the Transit Convention lays down that all disputes shall be brought before the Permanent Court of International Justice, unless, in pursuance of special conventions or general arbitration clauses, recourse is had to a settlement of the dispute either by arbitration or in any other manner.

This text appears to me to satisfy the wishes both of General Mance and of M. Hostie. Amongst the special conventions or general arbitration clauses provided for in this article, it may very well be agreed that the signatories of a navigation act may, when concluding it, agree to settle certain of their disputes by means of the arbitration of the international commission. It is for the signatory States of each navigation act to decide whether they consider themselves bound to have recourse to this exceptional arbitration procedure, or whether they consider that they should simply adhere to the general clause. They might even perhaps adhere to the general clause for certain classes of disputes, and for a dispute of a more simple and everyday nature

they may agree that it shall be the international commission instituted by the navigation act which shall settle disputes of a more simple and everyday nature. The article appears to me to offer the greatest field of action, and I see no reason for modifying it.

M. ALVAREZ (Chile; speaking in French). — As the Delegate of Germany very truly remarked, a distinction must be drawn between disputes which may arise in this matter,—disputes of an administrative nature or connected with regulations, and disputes actually of a legal nature. The former may be subjected to an enquiry, to decisions of courts of the kind provided for under Article 19; but for those of a legal character a procedure of a totally different kind must be followed, particularly as regards disputes between riparian States. This subject is of such importance that even the Sub-Committee on Article 1 is constantly encountering difficulties in the course of its work on the subject of disputes which may arise between riparian States.

I would therefore urge that this article be examined by the Sub-Committee, together with questions relating to Article 9. The Committee will have greater leisure to consider these questions. That would be preferable to endeavouring to establish jurisdictions now which may be the source of future difficulties.

The CHAIRMAN (speaking in French). — Does anyone else wish to speak?

We have before us the following three proposals :—

That of M. Detœuf to retain the article in the same terms as those of Article 15 of the Transit Convention;

That of M. Hostie to retain the terms of Article 15 of the Transit Convention, adding a passage based upon the British amendment;

That of M. Alvarez to refer this article to the Sub-Committee on Article 1.

Could we not decide at once which of the two systems—that of M. Hostie or that of M. Detœuf—we intend to choose?

M. ALVAREZ (Chile; speaking in French). — It would be better not to be too hasty. As the Sub-Committee on Article 1 is engaged in determining the duties and rights of riparian States, why should it not undertake to establish the jurisdiction which it thinks most suitable, and submit the whole to the Committee?

M. HOSTIE (speaking in French). — M. Detœuf's explanation appears to me most convincing, and if General Mance agrees with me I support his formula. Indeed, the words *general arbitration clause* may very well be applied to the terms of a navigation act.

Mr. H. O. MANCE (Great Britain). — I accept the proposal.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We think, as does the French Delegation, that Article 15 of the Transit Convention, which deals with disputes, may very well be applied to the Convention on Navigable Waterways, both for the reasons indicated and also because it provides for several modes of procedure in the settlement of disputes. We have always said that we would not agree to have imposed upon us one method only of settling disputes; we wish to be in a position to settle disputes in various ways, and in the last instance to bring them before the League of Nations. I also see nothing to prevent us from considering this question again, and I do not oppose the suggestion of M. Alvarez. I should like to state, however, that we support the proposal of the French Delegation.

M. ALVAREZ (Chile; speaking in French). — When Article 1 was being considered, we decided that this question should be settled by the League of Nations, but we did not state in what precise manner the League of Nations should do so. It is for this reason alone that I asked for the article under discussion to be referred to the Sub-Committee. If, however, the Committee considers itself to be sufficiently well informed, I do not press the point.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Does M. Alvarez propose to postpone the decision on this article until after a decision has been taken on Article 1?

M. ALVAREZ (Chile; speaking in French). — Certainly, after the decision on Articles 1 and 9.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Then I second M. Alvarez' proposal, but at the same time I accept the French proposal. This will not prevent the decision from being postponed. It must be a good one since it has been proposed by M. Alvarez, who is the President of the Sub-Committee on Articles 1 and 9. The Committee is continually being faced with the same difficulty. Certain fundamental principles have not been fixed, and on this account our progress is arrested from time to time.

M. HOSTIE (speaking in French). — As we are all agreed on M. Detœuf's very true suggestion that there can be no further question here of international commissions, we have no reason for not simply adopting what has been maturely considered, well thought out and adopted, with regard to transit.

M. ALVAREZ (Chile; speaking in French). — I do not oppose the suggestion of the French Delegate, but I ask time for reflection.

The CHAIRMAN (speaking in French). — We may provisionally consult the Committee, subject to such changes as may be introduced according to the solution adopted for Articles 1 and 9.

M. Detœuf proposes to substitute Article 15 of the Transit Convention for Article 19 of the Convention on Navigable Waterways, without any alteration. Your vote on this article will be a conditional one, and may have to be changed according to the regime which you adopt for Articles 1 and 9. I put M. Detœuf's proposal to the vote.

The proposal was adopted, 21 voting for.

ALTERATION IN ARTICLE 18

M. DETŒUF (France; speaking in French). — I take this opportunity of drawing the Committee's attention to the fact that Article 18, in the form in which it appears in the Draft, by no means conforms to the corresponding article adopted on the same subject in the Transit Convention. I think it would be desirable to adopt the same text. The article reads as follows (1) :—

ARTICLE 13

As regards the Contracting States who are signatories of the Treaties of Peace concluded with Germany on the 28th June, 1919, with Austria on the 10th September, 1919, with Bulgaria on the 27th November, 1919, with Hungary on the 4th June, 1920, the present Convention in no way affects their rights and obligations as established by the said treaties.

I think we have no reason to have a different text.

Mr. H. O. MANCE (Great Britain). — No, we may consider this article as common to all the Conventions.

The CHAIRMAN (speaking in French). — I think that the Committee will see no objection to adopting for our Article 18 the text of Article 13 of the Transit Convention. Moreover, it is a Formal Article which is not of technical importance.

(1) See *Verbatim Reports and Texts relating to the Convention on Freedom of Transit*, p. 298.

REFERENCE TO DRAFTING COMMITTEE OF ARTICLE 20 AND THE FOLLOWING ARTICLES

We now pass to Article 20.

Mr. H. O. MANCE (Great Britain). — As Article 16 of the Transit Convention has been omitted, it is logical, although I myself regret it, to omit the corresponding article in the present Convention.

The CHAIRMAN (speaking in French). — This means that our Article 20 will be omitted. As regards the following articles, they are Formal Articles, which must be similar to those of the Transit Convention. In this matter we may trust to the Drafting Committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If these are Formal Articles I do not desire to discuss them here, but in plenary session. I reserve the right to raise objections, because I am not satisfied with them as drafted by the Drafting Committee, which has not taken into account our amendments.

The CHAIRMAN (speaking in French). — Of course.

ADOPTION OF NEW ARTICLE 15a

We will now pass to Article 15a, as amended by the Austrian Delegation. The proposed text is as follows (1):—

Exceptions may be made in special cases, *and for as short a period as possible*, to the terms of the preceding articles in virtue of special or general measures which any of the High Contracting Parties may be obliged to take in case of grave events affecting the safety of the State or the vital interests of the countries, which would otherwise be seriously impaired, it being understood that the principle of freedom of navigation, and *especially of communication between the States situated upstream and the sea*, should as far as possible be observed.

M. WINIARSKI (Poland; speaking in French). — I think there is an error in the wording. The word *otherwise* must be omitted, or else a part of the sentence is lacking.

M. DETŒUF (France; speaking in French). — I think there would be no objection to omitting the words *which would otherwise be seriously impaired*, and changing the word *countries* to *country*.

M. HOSTIE (speaking in French). — I think we may second M. Detœuf's proposal. It is clear that immediately the vital interests of the country are at stake, they incur the risk of being impaired.

M. TSANG-OU (China; speaking in French). — Will this wording also be adopted for Article 7 of the Transit Convention?

The CHAIRMAN (speaking in French). — No.

M. TSANG-OU (China; speaking in French). — Then what text will be applied?

M. HOSTIE (speaking in French). — If it is an international waterway, this text will be applied; if it is not an international waterway, the text of the Transit Convention, unless the Conference in plenary session considers it desirable to adopt our text

(1) See p. 188.

and amends that of the Transit Convention. But this is not the time to discuss that question.

M. BIGNAMI (Italy; speaking in French). — These are clearly two different questions.

M. SEELIGER (Germany; speaking in French). — There is no doubt of that. We all know that the exception proves the rule.

M. HOSTIE (speaking in French). — M. Detœuf has proposed a judicious change which would leave only two differences between this text and that of the Transit Convention. One of these changes relates to the words *as short a period as possible*; there is no question of safety or of vital interests, but of the length of the period of application. The other difference relates to the words *especially of communication between the States situated upstream and the sea*. The purpose of this is to take into account M. Vallotton's comments.

M. TSANG-OU (China; speaking in French). — I ask that rivers forming frontiers should also be dealt with.

M. DETŒUF (France; speaking in French). — If the country situated upstream interrupts navigation sufficiently far downstream, it may cause damage to the downstream State equal to that which the downstream State can cause to the State situated upstream.

M. VALLOTTON (Switzerland; speaking in French). — The main point is to maintain access to the sea.

M. DETŒUF (France; speaking in French). — The main point is communication between riparian States and the sea.

M. TSANG-OU (China; speaking in French). — Apart from any question of upstream or downstream.

M. HOSTIE (speaking in French). — Then we might say...*that the principle of freedom of navigation and especially of access to the sea...*

M. DETŒUF (France; speaking in French). — ...*for all riparian States; or and especially communication between riparian States and the sea.*

M. VALLOTTON (Switzerland; speaking in French). — That is not at all the same idea. The case in point is not that of Holland, for example, which might deflect waters from a certain point, in order to maintain her communications; the intention is to safeguard the interests of States situated upstream as regards their access to the sea.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I propose to omit the words *especially communication*, for, when what should make better makes worse, it should be omitted. I would suggest saying *it being understood that the principles of freedom of navigation should be the aim as far as possible*.

M. VALLOTTON (Switzerland; speaking in French). — The aim was particularly freedom of communications for landlocked countries. If M. Tsang-Ou is satisfied with this formula, then I am.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Why not include also the interests of the other riparian States?

M. VALLOTTON (Switzerland; speaking in French). — Because that would change the whole idea.

M. HOSTIE (speaking in French). — Is there any objection to the wording *and especially between riparian States and the sea*? Obviously a country which fronts the sea has no need of inland waterways in order to communicate with the sea. We are agreed as to the idea; the rest is only a question of words.

M. VALLOTTON (Switzerland; speaking in French). — I maintain my protest as regards the actual principle of the article.

M. BIGNAMI (Italy; speaking in French). — I ask the Rapporteur to ascertain in the article corresponding to this one in the discussion on transit, the interpretation placed upon the statement which I made regarding the necessity of taking into account the vital interests of national defence in time of peace.

M. VALLOTTON (Switzerland; speaking in French). — The words *and especially communication between riparian States and the sea* satisfy M. Tsang-Ou.

The CHAIRMAN (speaking in French). — I think we should agree on the following text :

Exceptions shall be made in special cases *and for as short a period as possible*, to the terms of the preceding articles in virtue of special or general measures which any of the High Contracting Parties may be obliged to take in case of grave events affecting the safety of the State or the vital interests of the country, it being understood that the principle of freedom of navigation, *and especially of communication between riparian States and the sea*, should be observed as far as possible.

M. VALLOTTON (Switzerland; speaking in French). — M. Seeliger suggests adding the word *riparian* to the word *countries*.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Do not the words *and the sea* imply a limitation? For example, suppose M. Reinhardt leaves Vienna to go to Belgrade, he may pass through Buda-Pest, but Buda-Pest says to him : *We cannot allow you to pass because you are going not to the sea but to Belgrade*. When questions of this kind fall into the hands of jurists, it becomes somewhat dangerous; I say this in spite of my great respect for jurists.

M. HOSTIE (speaking in French). — Obviously, the words *freedom of navigation* entirely meet the case referred to by M. Avramovitch.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I ask that my remarks be entered in the records.

Mr. H. O. MANCE (Great Britain). — These are drafting amendments, and tend gradually to lead us back to the article as drafted in the Transit Convention. I think the addition at the end of the paragraph is quite justifiable because the situation as regards waterways is, in this respect, different from the situation of land routes; but I am not sure that the first addition is advisable unless we also put it in the corresponding article in the Transit Convention. If we say here—and herein lies the danger of making an addition to the text—*for as short a time as possible*, it may be implied that we are not bound by this condition in the Transit Convention. Therefore we should either delete it here or else include it here only on condition that it will also be inserted in the Transit Convention. I think there is no objection to this course.

M. HOSTIE (speaking in French). — This is only a Committee of the Conference. I propose therefore to leave the text in its present form, and to state in the Report that we note that from this point of view the situation is not very different from the same situation in respect of transit, and that it is for the Conference to take a decision on the point.

M. REINHARDT (Austria; speaking in French). — I feel compelled to propose a small amendment to my own text, and to say *communication by waterway between the States and the sea*.

M. PIERRARD (Belgium; speaking in French). — It would be well to insert the words *and for as short a period as possible* in the corresponding article of the Transit Convention, and I am not as certain as General Mance that the argument *a contrario* may be applied to the Transit Convention. The transit Convention and the Convention on Navigable Waterways are two different things. If we may plead the argument *a contrario* in the text of any one particular convention, I do not think we can do so when we pass from one convention to another. In any case I consider that the words *and for as short a period as possible* are an improvement on the original text.

The CHAIRMAN (speaking in French). — M. Detœuf's text seems to be approved by most of the Committee.

M. VALLOTTON (Switzerland; speaking in French). — No-one has given an opinion on my proposal. Are we or are we not to add the word *riparian* to the words *or the vital interests of the country*. Surely the interests of the colony of Erythria should not justify the closing of the Po.

M. BIGNAMI (Italy; speaking in French). — I agree; it amounts to the same.

M. DETŒUF (France; speaking in French). — Surely the phrase ... *of the riparian State* ... has no very definite meaning. You mean ... *of the riparian region* ... The State is an entity in itself. The meaning is thus completely changed.

M. VALLOTTON (Switzerland; speaking in French). — But then it would be possible to close the Rhine because you are meeting with difficulties in Cambodia.

M. DETŒUF (France; speaking in French). — We should have to prove that the difficulties arising in Cambodia compel the closing of the Rhine.

The CHAIRMAN (speaking in French). — I think that M. Vallotton's remark, although very clever, is not of such a kind as to be inserted.

M. VALLOTTON (Switzerland; speaking in French). — I should like there to be no misunderstanding on this point. If everyone agrees, then I am satisfied, but I should like to know where we are going. I should like to be sure that there is a territorial connection between the cause alleged and the effect. I do not see why the navigation of the Rhine should be impeded on account of events taking place in Oceania.

The CHAIRMAN (speaking in French). — Has anyone any remarks to make? I will put to the vote Article 15 (a), amended as follows :

Exceptions may be made in special cases *and for as short a period as possible*, to the terms of the preceding articles in virtue of special or general measures which any of the High Contracting Parties may be obliged to take in case of grave events affecting the safety of the State or the vital interests of the country, it being understood that the principle of freedom of navigation, *and especially of communication between riparian States and the sea*, should as far as possible be observed.

Article 15 (a) was adopted by 22 votes to 4.

M. TSANG-OU (China; speaking in French). — In the *Green Book* (1), in that part of the report which deals with Article 7, there is a definition of the words *national security (safety of the State)*. Shall we keep the same definition?

(1) See p. 423.

M. BIGNAMI (Italy; speaking in French). — The vital interests of national defence are not provided for there.

Mr. H. O. MANCE (Great Britain). — This will be inserted in the Report.

M. DETŒUF (France; speaking in French). — I think we need only refer to the discussion which took place when the Transit Convention was considered.

M. VALLOTTON (Switzerland; speaking in French). — I will not give my opinion on any interpretation. I consider that each of us should keep his own opinion on this subject. We cannot launch out into a discussion here. Indeed, this is the best proof of the danger of this article.

M. WINIARSKI (Poland; speaking in French). — I support M. Vallotton's view.

M. BIGNAMI (Italy; speaking in French). — In connection with national defence it appears obvious that reference must always be made to the definitions provided in the Transit Convention.

The CHAIRMAN (speaking in French). — It is quite obvious.

M. HOSTIE (speaking in French). — I do not quite understand the discussion which has just arisen. The Committee has adopted a text by a large majority. It is clear that when this text has to be interpreted, in so far as it coincides with the text of the Transit Convention, reference will have to be made to this latter text in order to understand the present one.

M. BIGNAMI (Italy; speaking in French). — Exactly.

DISCUSSION OF ARTICLE 17

The CHAIRMAN (speaking in French). — We will pass to Article 17.

ARTICLE 17

Greater Facilities.

The present Convention must not be understood to imply in any way, on the one hand the withdrawal of still greater facilities granted for freedom of navigation, such, for instance, as the abolition of all dues and charges on any international waterway, under conditions compatible with the principle of equality between the subjects, property and flags of all the High Contracting Parties as defined in and applied to the present Convention or, on the other hand, the prohibition of the granting of such greater facilities in the future.

Amendments to this article have been put in by the Chinese, Serb-Croat-Slovene and Japanese Delegations.

The Chinese Delegation proposes that, should it be decided that the definition of internationalisation should apply to international rivers without distinction of general or limited concern, Article 17 should be omitted and Articles 10 and 11 of the Transit Convention substituted for it.

The Serb-Croat-Slovene Delegation proposes to add a paragraph stipulating that the same benefits shall be accorded to devastated countries as will be granted them under Article 12 of the Transit Convention. I will read this paragraph :—

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting Party which can establish a good case against the application of any one of the stipulations of the present Convention, on the whole or part of its territory, on the grounds of the grave economic situation arising out of devastations perpetrated by enemy troops on its soil during the war of 1914-1918, shall be deemed to be relieved temporarily from the obligations entailed by the application of the said stipulations to the said territory or part thereof.

It is, in fact, a new article, and Article 17 is still reserved.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — With your permission I will explain the reasons for which we ask for a new paragraph to be added to Article 17, in order to give devastated countries the same benefits as are accorded to them under Article 12 of the Transit Convention. We thought that, as regards navigation, difficulties would remain for a long time, because the installations of many of our ports have been destroyed, they no longer possess equipment and their facilities are thus very limited. We should not like serious hindrances to be caused to navigation under the pretext of facilitating it. I think that the request which I have formulated is quite a fair one, and I ask the Committee to be so good as to consider it.

M. SIDZIKAUSKAS (Lithuania; speaking in French). — I second the Serbian Delegate's proposal.

M. HOSTIE (speaking in French). — I think that the proposal of the Serbian Delegation is entirely in conformity with the spirit in which we have prepared our Drafts. I do not think there is any conflict between that spirit and the proposed amendment. I have only one comment to make,—I think it would be better to make this a separate article rather than to add it to Article 17.

The CHAIRMAN (speaking in French). — I will put to the vote the amendment submitted by the Serb-Croat-Slovene Delegation.

The amendment was carried unanimously.

The CHAIRMAN (speaking in French). — I am very happy to note the spirit shown in the vote on this amendment.

M. TSANG-OU (China; speaking in French). — The explanation which I must give regarding my amendment is very long and difficult. I should like indeed to have spoken on each article before the vote was taken, and as I have said nothing on any of these occasions, I should like to give all my explanations regarding Article 17 together. It must not be thought that because I have been so generous I have accepted all the articles.

I should like in the first place to give you some explanation of the motives which led the Chinese Delegation to propose the amendment now submitted to you. I propose that, should the Conference decide that the definition of internationalisation shall apply to international rivers without distinction between general and limited concern, Article 17 should be omitted, and Articles 10 and 11 of the Transit Convention substituted for it.

We have three rivers in the north of China. Mention has already been made of the River Amur, but not of two other rivers, one of which forms the frontier with Corea and the other with Russia. The total length of these rivers is about 2,000 kilometres. They are international, and are thus used for transit. I have said that one of our rivers forms the frontier with Russia, which is not an adherent of the League of Nations. Moreover, there are in our country measures referring to rivers which are entirely contrary to the spirit of the present Convention. You will see that there is here a whole series of difficulties which will have to be smoothed away. As Article 17 of the Convention on Navigable Waterways is very closely connected with Articles 10 and 11 of the Transit Convention, it should certainly be possible to bring the terms of the two Conventions into accord, in order to facilitate their application. I will not now enter into details of individual questions,—that would take too long. I propose to explain my case before the Sub-Committee.

The CHAIRMAN (speaking in French). — You might give us the main outline of your observations.

M. TSANG-OU (China; speaking in French). — You know that Article 6 of the Transit Convention provides for the relations between contracting and non-contracting parties; but no similar article has been introduced into the Waterways Convention,

and, as I have said, we have rivers the riparian States of which are non-Contracting Parties. I repeat that these are very complex questions.

You will remember that on March 24th I raised a question with regard to the relations existing between the Convention on Navigable Waterways and the Transit Convention. My question was as follows :—

Are the various Conventions which the Conference is called upon to discuss and approve independent of or dependent upon each other? For example, is the Transit Convention independent of the Waterways Convention, or is it partly dependent upon it? The Commission of Enquiry at Paris wished to render these two conventions absolutely independent, and that only the additional advantages to be granted to transit on international waterways should be comprised in the Convention on International Navigable Waterways,—for example, in Article 7. But in the Waterways Convention there are clauses relating to administrative measures such as policing (Article 5); payment for services rendered, for example, help given to navigation and works for improvement on rivers (Article 6), the regulation of navigation (Article 10), and the use of facilities in ports (Article 8).

Vessels in transit, as well as other vessels, must be subjected to the conditions referred to in the above-mentioned articles, and are to enjoy the same facilities; but no provision of this kind exists in the Transit Convention. It is true that in the Preamble to the Transit Convention it is specially laid down that :—

“ The High Contracting Parties being desirous of applying the principle of freedom of transit, in conformity with the pledge given in Article 23 (e) of the Covenant of the League of Nations, without prejudice to their rights of sovereignty or authority on the route set apart for transit...”

But nothing of this kind is mentioned in the Convention on International Navigable Waterways. If it were thought necessary to specify certain conditions which applied to vessels conveying goods for import or export on international navigable waterways (Article 7) and for coasting trade (Articles 4 and 16), it is also necessary to specify them for vessels in transit on the same waterways. This has not been done. As regards transit on navigable waterways apart from the provisions laid down in the Transit Convention, it is entirely subject to the laws of the country through which transit traffic passes.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I think that the moment has not yet come to consider the questions raised by M. Tsang-Ou. These are questions concerning the application of the Convention, which in certain particular instances is very difficult. The logical course would appear to be to wait until we have provisionally arrived at an agreement regarding the Convention itself before we see whether there are really difficulties in its application. When we have examined a certain number of questions which have been reserved, it may possibly be found that these difficulties of application to which I have referred, are smaller or greater than was thought; but until that time I do not think that they can profitably be examined.

M. TSANG-OU (China; speaking in French). — On the last occasion (1) I acceded to your request for postponement until Article 17 was discussed, but as we have now arrived at Article 17, I cannot agree to a fresh postponement. I ask you, therefore, to be so good as to support my proposal, by which I am to be allowed to put before a sub-committee precise and detailed observations on this question—which is causing me some anxiety—in order that a decision may be arrived at.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — We are in complete agreement. I meant that the question was not ripe for discussion, and that we could not consider it here to-day.

M. TSANG-OU (China; speaking in French). — Exactly.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like to say that I second the Chinese Delegate's proposal. We must consider his case,

(1) See p. 101.

and allow him an opportunity of submitting it to a sub-committee as he desires; but I think he would have been more successful if he had raised this question at a plenary meeting.

M. TSANG-OU (China; speaking in French). — As we have been discussing the question of the Danube from the beginning of the Conference until the present moment, I ask you to treat us fairly and grant us a few hours for the discussion of our many thousands of kilometres of navigable waterways.

The CHAIRMAN (speaking in French). — In conformity with the desire expressed by the Delegate of China, I propose to the Committee that the case put before us by M. Tsang-Ou be submitted to the consideration of the Sub-Committee on Articles 1 and 9. This Sub-Committee will take all the time necessary for a close examination of this serious question, in which the whole of Asia is concerned. I think there will be no objection to this.

There is also a Japanese amendment to Article 17, consisting in the omission of the words *such, for instance, as the abolition of all dues and charges*.

M. KASAMA (Japan; speaking in French). — This is a drafting amendment, and is not of great importance. We ask for the omission of the words *such, for instance, as the abolition of all dues and charges*; without these words, the article is easier to understand. Moreover, legal misunderstandings may be caused by thus citing an example in the article. No example is cited in the corresponding article of the Transit Convention.

M. HOSTIE (speaking in French). — I am fully in agreement with the amendment submitted by the Japanese Delegation. In view of the great importance of the question, and the necessity for removing all possible doubt as to the very extensive range of conception of facilities contemplated, the article can only gain by the omission of this example, which was inserted in order to meet some quite needless scruples. What is certain—and it should be placed on record—is that not only the instance referred to, but all other cases which may arise in respect of any article whatever of the Convention, are included under this text. From the point of view of clearness and logic, therefore, there is every reason for the omission proposed by the Japanese Delegation.

M. KRBEC (Czecho-Slovakia; speaking in French). — If the Report mentions that this provision in Article 17 will apply to the case referred to in the present text, our Delegation will second the Japanese proposal.

M. KASAMA (Japan; speaking in French). — I accept this proposal.

M. DETOEUF (France; speaking in French). — Allow me to suggest a slight change of wording. The text would be clearer if *d'une part* were inserted after the words *implicquant aucunement* and the words *d'autre part* after the words *non plus* (1).

Mr. H. O. MANCE (Great Britain). — It is an article common to all the Conventions. We cannot change one without changing the others. This alteration might be laid before the Drafting Committee.

The CHAIRMAN (speaking in French). — While thanking M. Detœuf for having pointed out this lack of completeness, the Committee leaves the decision in this matter to the Drafting Committee.

As regards the amendment, it is understood that the observation of the Czecho-Slovak Delegate will be mentioned in the Report. If there is no objection, therefore,

(1) The words *on the one hand* and *on the other hand* already exist in the English text.

the proposal of the Japanese Delegation, which appears to have the support of the Committee, will be unanimously adopted.

This amendment having been adopted, Article 17 with the amendment of the Chinese Delegate is referred to the Drafting Committee.

DISCUSSION OF ARTICLE 16 .

I will now read Article 16.

Local Transportation.

This Convention does not in any way affect the right of carrying out the local transport of passengers and goods between ports situated under the sovereignty or authority of one and the same State.

M. KASAMA (Japan; speaking in French). — As the *Green Book* explains (1), this article, dealing with the question of reserving cabotage, was the subject of long discussions during the meetings of the Commission of Enquiry. The Japanese Delegation, faithful to its convictions, maintains this attitude from the period when it was unreservedly supported by the Belgian, British, Netherlands and Greek Delegations. In our opinion, which I hope is still shared by these delegations, if any exception whatever is to be allowed upon an international river—and this would be a serious infringement of the principle of flag equality—not only would the value of the present Convention be completely destroyed, but the principle of freedom of navigation also would in consequence be rendered a mockery.

The Treaty of Versailles makes no reservation as regards local transport upon waterways declared to be international, and I believe that the Allied and Associated Powers, in laying down the terms of this Treaty, intended to base, and still base, their views upon the same principle of perfect flag equality in drawing up this Convention, which is to replace the Treaty of Peace.

The Japanese proposal is to omit the whole of this article, in order that the general interests of international navigation may not be prejudiced. The Japanese Delegation also proposes the omission of Article 4, in order that the present Convention may also be applied to local passenger and goods traffic in all ports on waterways of international concern. It appears to me that, as several delegations (the Belgian, British, Netherlands, Greek, and Swiss) have clearly pointed out, such a provision would not guarantee freedom of navigation; on the contrary, they would tend to justify intentions to monopolise commercial inland navigation for the benefit of the riparian countries alone. The Treaty of Versailles, as well as previous treaties, does not contain any restriction in this respect. The principle of the equality of flags, which is far more liberal in its nature than the principle of equal treatment for riparian and non-riparian States as regards local transport on rivers of international concern, has always been defended and upheld by the liberal Powers. It is even recognised as a principle of international law. For this reason our Delegation proposes the omission of both articles, and I hope that the Committee will share our opinion.

M. SCASSI (Greece; speaking in French). — From the very beginning of this discussion, the Greek Delegation has adopted a definite attitude with regard to the provisions contained in Articles 4 and 16 of the Convention. A statement referring to those questions was read in plenary session and distributed to all the Members of the Conference (2).

The Greek Delegation considers that these clauses are incompatible with the principle of the Conventions which we are called upon to draw up, incompatible with the accepted principles of international public law even before the war, incompatible with the letter and the spirit of the Covenant of the League of Nations and the provisions of the Treaty of Peace, of which it is an integral part. We called and still call for

(1) See p. 427.

(2) See p. 11.

their omission, and therefore our Delegation espouses the amendment of the Japanese Delegation. We do not conceal from ourselves the fact that the integral application of the principle of absolute liberty and absolute equality of treatment constitutes an ideal which unfortunately we cannot hope to attain at the first onset without laying ourselves open to the charge of Utopianism. Neither in this sphere nor in any other is it possible to eradicate the past. What do we find? That in the paths which this Conference is endeavouring to follow obstacles are sometimes to be found,—obstacles which come to us from the past, and which we endeavour to surmount, or before which we are sometimes forced to stop temporarily whilst hoping better things from the future. To our great and keen regret, we are forced to acquiesce in this hindrance to our progress. But if, in the past or in the present, instead of obstacles we had met with encouragement,—if the past or the present had opened to us those ways along which we desire to progress as far as possible, it would be absurd to stop instead of at least following the road already marked out for us and perhaps even widening and improving it. In other words, it is even possible that in certain circumstances we cannot create and innovate along the lines of the liberal principles which we all profess. But, when there is no question of innovation, when we do find a situation which has already been created and which has long been in existence, and is in perfect accord with these principles, would it not be an unheard-of thing, whatever reasons may be alleged, for us to impose any hindrance upon our progress? Still less can we retrace our steps. I agree that in the name of individual interests we might cry “Halt!” but I do not agree that, in the name of these interests, in an assembly called together under such auspices as this, we can possibly “Backwards march!” But this halt or volte-face would be imposed upon us if we adopted the reservations proposed in Articles 4 and 16 of the Draft now before us.

These clauses do not merely considerably reduce that freedom of navigation which we are instituting as a principle,—that in itself is serious enough—but they even go so far as to undo what the past has done, and the present is preserving, in this respect. It is useless to repeat once again the history of the regime of liberalism proclaimed for more than a century in the navigation of various rivers,—a regime which granted the right of cabotage on those waterways to all the nations. This policy was inaugurated by the Treaty of Paris of 1814 and that of Vienna a year later. When mentioning the Treaty of Vienna, I need hardly tell you that I am not thinking of that old diplomatic instrument, which was dead and buried long ago, in its character as a political treaty. It was the fruit of the diplomacy of other days; since then the principle and the methods of diplomacy have completely changed, so they say. I agree, if only for the sake of *esprit de corps*. It is none the less true that the establishment by this Treaty of principles intended to regulate the navigation of rivers separating or crossing several States, is evidence of great progress in international law. The proof of this is that half a century later, when a great Congress, which could not be accused of being reactionary, especially for that age, met in Paris in 1856, at a period when liberal ideas as well as international law had made considerable progress, these principles were again adopted and applied to another great river,—the Danube. On this occasion this idea was still further perpetuated; it was declared that the principle—absolute freedom of navigation—should henceforth form part of the public international law of Europe. Later treaties such as that concerning the Congo, which is comparatively recent, have extended the application of this rule, which is definitely admitted in law on other waterways.

All these treaties provide firm ground both *de jure* and *de facto*. How can we now pretend to ignore this? As a result rights have accrued in favour of all nations, and how can we but recognise these acquired rights? That eminent professor, M. Alvarez, has maintained that there can be no acquired rights in international affairs. I must suppose that this assertion goes far beyond the views held by our colleague.

M. ALVAREZ (Chile; speaking in French). — I will express my opinion later on that point.

M. SCASSI (Greece; speaking in French). — For, without entering into a discussion of an economic nature, it may be said that to deny so absolutely the existence of rights

once acquired would simply lead to the negation of all rights. Acquired rights are respected by the law as the result of an elementary sentiment of justice, and should not this same sentiment of justice inspire those who draw up international laws when they are faced with the acquired rights of nations, of course so long as these rights are not derived from arbitrary treaties dictated by force (the word *rights* should not be taken here in its true meaning) but from agreements based upon the higher principles of justice, freedom and brotherhood? Again, does not the Covenant of the League of Nations—in conformity with the terms of which we have assembled here—repeat almost in the same terms and—as a logical consequence—in the same sense, the principles proclaimed by the previous treaties to which I have referred? The Treaty of Paris of 1856 states that *with the exception of such Regulations (Police, Quarantine, etc.) no obstacle whatever shall be opposed to free Navigation*. Again, Article 23(e) of the Covenant lays down that our Convention should *secure and maintain freedom of communications* and therefore of navigation. Thus, under the terms of the Covenant our task is to maintain freedom of navigation. If we cannot further extend this freedom, we must at least maintain it within its present limits. But, more than this, have the authors of the Covenant given us no lead to guide us in our work? They have. The authors of the Covenant are also the authors of the various Treaties of Peace, one chapter of which contains provisions regarding ports, waterways and railways. We know that a Commission was appointed *ad hoc* to draft these provisions. We also know that if this Commission had had the time, it would have drawn up a general convention on this subject, but there was not time, and the Commission had to confine itself to drafting a few clauses, in particular as regards navigation,—those contained in Articles 332 to 337 of the Treaty of Versailles and the corresponding articles in the other treaties. Article 338 lays down that the regime provided in the above-mentioned clauses was to be superseded by a regime to be established in a Convention on Navigable Waterways,—the present one. It is evident that Article 23(e) of the Covenant is intimately bound up with these Treaty articles, which were drafted simultaneously by the same persons. The Convention which we are occupied in preparing is also provided for in Article 23 of the Covenant, as well as in Article 338 of the Treaty of Peace. In the clauses relating to navigation to be inserted in the Treaties of Peace, the principle of freedom and equality of treatment as regards navigation on inland waterways declared to be international, is categorically stated without any restriction or reserve,—in the words of Article 332, *no distinction being made to the detriment of nationals, property...* The matter could not be more explicitly stated. If the authors of Article 23 of the Covenant, and of the articles of the Treaties of Peace which form an integral whole with it, intended to reserve *cabotage* on waterways, they would have been careful to say so, as they have done for other questions. Thus Article 335 of the Treaty of Versailles speaks of the right of riparian States to establish customs dues, etc.,—*this provision shall not prevent the fixing by riparian States of customs, local octroi, etc.* This article even enters into further details by referring to charges for the use of cranes, elevators, and so forth. The authors of these provisions of the Treaties of Peace—in other words, authors of the Covenant—would not have failed to insert a restrictive provision or simple reservation on the subject of river *cabotage* if they had intended to do so. I will say more; it would have been imperatively necessary in such a case, because the authors of these articles cannot be deemed to have been unaware of the *de jure* and also *de facto* situation which existed when these provisions were drafted, and which had been in force for a long time on certain international rivers. They could not have been ignorant of the provisions which form part of *international public law*. If it had been their intention to introduce innovations in that matter, they would not have failed to state their intention explicitly. I maintain therefore that the terms of Article 332 of the Treaty of Peace imply that non-riparian States also possess the right of carrying on *cabotage* on waterways. To confirm this we need only compare the text of this article with that of the corresponding provision in the Treaty of Paris of 1856.

The navigation of the Danube cannot be subjected to any impediment or charge not expressly provided for by the Stipulations contained in the following Articles... With the exception of such Regulations, no obstacle whatever shall be opposed to Free Navigation.

That is the text of the Treaty of Paris. How has it been interpreted? We need not quibble as to the meaning of the text. We are faced by a question upon which judgment has already been passed. It is in virtue of this text that for nearly seventy years river *cabotage* has been freely carried on on the Danube. What does Article 332 of the Treaty of Peace say?

On waterways declared to be international... nationals, property and flags of all Powers shall be treated on a footing of perfect equality, no distinction being made to the detriment of the nationals, property, or flag of any Power between them and the nationals, etc... of the riparian State itself, etc.

The inference, the consequence to be drawn from a comparison of these two texts is absolutely simple. Which is the more explicit, wider, the more comprehensive, that of the Treaty of Paris of 1856 or that of the Treaty of Peace? Undoubtedly, the latter. The right of carrying on *cabotage* was deduced from the terms of the Treaty of Paris, and *cabotage* was instituted on the Danube and has been carried on there ever since. We cannot claim that what has resulted from the lesser cannot result from the greater.

Article 23 of the Covenant and the corresponding articles of the Treaties of Peace constitute the charter of our Conference. Any provision which contravened the principles and guiding lines laid down in it would, so to speak, be anti-constitutional. Why? More than once in the course of our discussion—only yesterday, in fact, when the rules of procedure of the Conference were discussed—we had to refrain from taking decisions, although most of the delegates considered them wise and timely, because it had been pointed out that these provisions would contravene such and such provisions adopted by the Geneva Assembly or the Council of the League of Nations; and do you wish us to adopt resolutions contravening provisions of an even higher authority,—the Covenant of the League of Nations and the Treaties of Peace? The Greek Delegation for its part considered it unnecessary to make a profession of faith at the beginning of our meeting, to make a display of liberalism and of the spirit of humanitarian solidarity in this Amphictyonic Council. We preferred to prove this by our action alone in the course of the various debates. I appeal to all the Members of the Conference; whether the question before the meeting affects our own individual interest or whether it only concerns us from a general point of view, as a Member of the Conference and not as an individual State (as, for example, questions regarding colonies, of which Greece does not possess any), the Greek Delegation has always sided with the more liberal view. Even when the absence of any particular interest rendered us, so to speak, less competent to probe into the questions brought up for consideration, our Delegation had a sure criterion to guide its vote,—we asked ourselves on what side was there more freedom, greater equality of treatment, and we resolutely ranged ourselves on that side. We can therefore arm ourselves with the authority lent to us by the line of conduct which we marked out, and which we have always followed, in order to claim the application of the same principle in matters which do affect our own interests.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I thought that the Japanese Delegation proposed to add the following words as a second paragraph to this article :

The words local transport in the preceding paragraph signify transport other than imports, exports or traffic in transit, with or without transshipment from one vessel to another, with or without unloading on to a quay, with or without warehousing *en route*.

I should have accepted this amendment, but I cannot accept the complete omission of the article as the Japanese Delegate has proposed. Having made this statement, I reserve the right to speak later.

M. WINIARSKI (Poland; speaking in French). — As the Polish Delegate had proposed an amendment to Article 16, would this not be the time for some explanations to be given on this subject? Our amendment has the effect of giving to Article 16 a meaning radically opposed to that of the Japanese proposal.

The CHAIRMAN (speaking in French). — Here is the text of the Polish amendment.

The present Convention must not be regarded as in any way affecting the right of reserving in favour of its own or any other flag, the carrying out of the local transport of passengers and goods between ports situated under the sovereignty or authority of one and the same State.

Similarly, agreements participated in by a part only of the riparian States situated on one and the same waterway recognised as of international concern, may be concluded with the object of reserving for the flags of these States the right to carry out the local transport of passengers and goods between ports situated on this waterway and under the sovereignty or authority of these States.

M. WINIARSKI (Poland; speaking in French). — I should like to have the opportunity of making a few observations, so that the Committee may have before them both aspects of the problem. I do not intend to treat this question fundamentally, but I should like to say a few words in explanation of my amendment. The view which I maintain is the exact opposite of that of the Japanese Delegation.

The Polish proposal consists of two parts, the first of which adds greater precision to the text of Article 16 of the *Green Book*. If I understand aright a shade of meaning in the French language, the word *visant* (affect) seems to me to perpetuate the existing conditions in regard to *petit cabotage*. I refer to the *Green Book* for the explanation of this text. In the Commission of Enquiry in Paris, we were not entirely agreed as to the principle of eliminating commercial questions from the problem of navigation. But if I am not mistaken, we have been unanimous, from the very beginning of this discussion, in considering the commercial question as quite distinct from questions of navigation. I interpret the word *visant* as follows:—*wherever pre-war custom or conventions did not permit riparian States to carry on petit cabotage, no change must be made*. According to our proposal, all riparian States will be granted the right to reserve *petit cabotage*, even on international rivers, on which pre-war custom or conventions did not permit such reservation. We also propose the addition of the words *in favour of its own or any other flag*. I think that the text of the *Green Book* must be understood in the same sense, but we considered it desirable to make the text more precise.

The second part of our amendment has been drafted on the same lines. The text which we propose is as follows :—

Similarly, agreements participated in by a part only of the riparian States situated on one and the same waterway recognised as of international interest, may be concluded with the object of reserving for the flags of these States the right to carry out the local transport of passengers and goods between ports situated on this waterway and under the sovereignty or authority of these States.

Let us take as an example an international river which has several riparian States. If a State can reserve local transport traffic between its own ports, either for its own flag or for any other, it is quite natural that two riparian States may agree to reserve for their own flags local transport traffic between their ports. This question, I must admit, is to a certain extent connected with the question of Article 4. One may regard it as providing for an extension of *petit cabotage* or we may regard it as a special case arising out of the general case provided for in Article 4. This is the purport of the proposal made to you by the Polish Delegation. I repeat that I reserve the right to speak again in the debate,— perhaps to-morrow. We wished to draw a clear distinction between commercial operations such as local transport, and freedom of navigation.

M. ALVAREZ (Chile; speaking in French). — I should like to reply to two of the points in the speech of the Delegate of Greece, first of all in regard to the rights of *cabotage*. The Greek Delegate maintains that freedom of navigation is an international principle, and that in virtue of this principle the right of reserving *cabotage* should not exist.

M. SCASSI (Greece; speaking in French). — We consider that, in accordance with a universally recognised principle of international law, *cabotage* must not and should not be reserved for a riparian State.

M. ALVAREZ (Chile; speaking in French). — The principle put forward by the Delegate of Greece has never been admitted in America. During the nineteenth century the States of America always reserved this right of *cabotage*. I do not think that these States would be disposed to abandon any part of their rights of *cabotage* for the sake of principles of freedom. Owing to our geographical situation, the question is vital for us. I do not think I need insist further on this subject, but if there are any representatives of Latin America here who do not think as I do, I should be very glad to hear their views. I now pass to the second point which I propose to consider. The Delegate of Greece states that I maintained that international law knows no acquired rights. That is true; I did state it, but I also reserved the right to explain myself, and I now propose to do so as briefly as possible.

I must tell you for what purpose I made this declaration and its significance. If we turn to constitutional law, we find that when an organisation is created, when the powers of the State, of the Government, of the provinces of the communes are determined, when it is decided that Parliament shall consist of two Chambers, this organisation is not immutable. The Constitution may introduce changes, and no-one has the power of opposing it in the name of alleged acquired rights. Let us suppose, for example, that to-morrow a country wishes to abolish one of its two Chambers. Could it be argued that because its political organisation had hitherto included two Chambers, the dual principle must be retained? Of course not. A country is sovereign, and when it considers that a new political organisation is required, it adopts it, and no-one has the right to prevent it. And what I have stated of constitutional law applies with still greater force to international law. Can we possibly admit that States which are constantly striving to achieve progress in the principles of freedom and equality, which are necessary for their social co-existence, are opposed to any change in the international organisation on the pretext that they have acquired historic rights? Of course not. The Delegate of Greece claimed that if in the future complete freedom of navigation were declared on any river, the riparian States might say that this freedom of navigation could not affect their rights, and that they had acquired rights on the river. I maintain in reply that this claim is unacceptable.

Again, let us suppose that by a new principle of international law it had been laid down that freedom of navigation no longer existed on international rivers; would third parties be allowed to claim the right of free navigation on those rivers, on the pretext that they possessed acquired rights? Assuredly not. There are no acquired rights, even for States whose nationals may have navigated on such and such a river for centuries. According to the principles of international law, when a river is once closed, there are no acquired rights. It is, I repeat, in this sense only that in constitutional and international law there are no acquired rights.

M. SCASSI (Greece; speaking in French). — My remarks have been misunderstood. I never maintained that it was only in international law that the principle of freedom of river navigation was universally recognised. My claim was that in virtue of certain treaties the right has been proclaimed to carry on *cabotage* freely on certain rivers, and that these treaties will henceforth form part of public international law.

As regards acquired rights, which are disputed in theory by M. Alvarez, I think there is a misunderstanding. I said that acquired rights must be *respected*. I did not claim that nothing in these acquired rights could be changed. I argued from this that acquired rights should not be trampled under foot. In actual internal legislation it is a rule that laws must as far as possible respect acquired rights.

M. ALVAREZ (Chile; speaking in French). — Not in international law.

M. SCASSI (Greece; speaking in French). — In internal legislation there is also another principle,—laws must not be retrospective. There are, however, exceptional cases in which the law is retrospective and others in which acquired rights may be infringed; but as a general rule they must be respected. What is the reason for this principle, which is universally admitted in private law? It satisfies a sentiment of elementary justice. Does not this sentiment also exist in international law? Should not international law take the same considerations into account?

M. MONTARROYOS (Brazil; speaking in French). — I do not intend to enter into a scientific discussion, as the jurists have done. My aim is a much simpler one. I wish first of all to know what is *cabotage*. I should also like to point out that the present discussion has become somewhat lively on account of the confusion produced by this word. I will not return to the discussion which took place when the *Green Book* was drafted. You all know the different interpretations which have been given to the words *petit cabotage* and *grand cabotage*. In the end *cabotage* remained undefined, and it is for this very reason that we appear to be involved in the maze of a discussion which has no outlet.

The principle of freedom, the Covenant and the Treaty of Versailles, have been invoked to prove that the right of preserving *cabotage* should not be maintained, but I propose to invoke all these principles to prove that it should. In the first place let us come to an understanding on the question of navigation. Navigation must be regarded from the geographical and also from the commercial point of view. From the geographical point of view it may be divided into two classes, maritime and inland. Navigation on lakes is included under inland navigation. From the commercial point of view navigation serves two objects,—there is international navigation, for the purpose of carrying on commerce between different countries, and navigation within the limits of any one country. According to generally accepted ideas, *cabotage* means commercial transport between the ports of one and the same country. International navigation is commercial transport between the ports of one country and those of another. That is a clearly defined distinction. What are we seeking here? *Freedom for international navigation*. We are opening international navigable waterways to the shipping of all countries. A vessel leaves Japan, for example, *en route* for England. It is free to bring its goods and unload at port A, port B or port C in Brazil, but according to the constitutional law of Brazil it is not free to transport goods from port A to port B or port C. On the other hand, it may load goods from one of these ports and carry them to England. That is what is called freedom of navigation, freedom of commerce between nations.

What is our present object? To throw open internal commerce to all? What we propose does not affect freedom of navigation, but actually opens to all flags commerce between the ports of the same country. It may well be imagined that any country which wishes to do so would do so, but it cannot be compelled. If it does not, does the question of freedom come into play? In no way. You are quite free in your own home to reserve certain things for yourselves. You open your house to everybody, you allow people to carry in or take away whatever they like, but you reserve the right to transport such and such a thing which belongs to you from one room to another.

I should like to make my definition still more precise and say that *petit cabotage* is one thing and *grand cabotage* another. In universally recognised treaties, in texts which have been published and which are considered sacrosanct, what we call *grand cabotage* is a totally different thing from what you call *petit cabotage* and *vice versa*. For example, according to constitutional Brazilian law, *grand cabotage* is trade between the ports of the various Brazilian States within the limits of the country. As you know, Brazil is a federation of 20 States. *Petit cabotage* is trade carried on between ports situated within any one State. This theory is modified by certain small details, but I will not enter into these; I will ask you to remember this general idea. According to Brazilian constitution, *cabotage* is reserved for the Brazilian flag, and Brazil cannot accept any Convention which would throw open trade between its ports to all flags.

I have shown you that freedom of navigation has nothing to do with freedom of internal trade. There is yet another argument. I know of no part of international law which says that right to the free exercise of this internal trade is proclaimed by international law. What I know is that the Treaty of Versailles and the Covenant of Versailles in no way authorise the idea of abolishing the reservation of *cabotage*. Brazil is one of the signatory Powers both of the Treaty and of the Covenant. According to her constitution, as I have said, *cabotage* is reserved for the Brazilian flag, but how could Brazil have signed the Treaty of Versailles if it had implied revolutionising her constitution? I wish to urge this point strongly; Brazil will refuse to sign a Convention in which *cabotage* is open to all flags. Brazil remains faithful to

the Treaty of Versailles, to her constitution and to the principle of freedom of international navigation, on condition that inland navigation does not enter into the question.

M. SEELIGER (Germany; speaking in French). — Allow me to add a few observations to the very interesting ones which the Brazilian Delegate has put before us.

In international law, by *cabotage* is understood the transport of goods or passengers from one port in a country to another port in the same country. According to European international law *petit cabotage* is spoken of when it is a question of ports situated on the same sea, and *grand cabotage* when the ports are situated on different seas. Maritime transport from Bordeaux to Marseilles is *grand cabotage*, from Bordeaux to Nantes or to Le Havre is *petit cabotage*.

M. MONTARROYOS (Brazil; speaking in French). — That is, within the limits of the country.

M. SEELIGER (Germany; speaking in French). — Consequently, in European international law, the word *cabotage* is only applied to maritime navigation, and we may therefore clearly say that it is a rule of international law that nations have had the right to reserve this *cabotage*. France reserved it by a law of 1795, and other nations have reserved it also. Germany has also reserved it, but within very strict limits; she has granted it to all who have granted it to her, particularly to the Netherlands. Our view indeed is that it should be possible to carry on *cabotage* everywhere. I cannot admit that this form of navigation should be reserved for nationals; if ports are opened there should be the right to forward goods and convey passengers to any destination whatever. In any case Germany allows the right to carry on *cabotage* to all nations which have granted her the same right in commercial treaties.

The *cabotage* question with which we are dealing here is quite different. It is not *cabotage* properly so-called, and I am glad that in the Draft Convention we do not speak of *cabotage*, but of *local transport* between the ports of one and the same country or between the ports of different countries.

M. SCASSI (Greece; speaking in French). — We are in agreement. I use the word *cabotage* for the sake of convenience.

M. SEELIGER (Germany; speaking in French). — As regards *cabotage* on rivers, our opinion may be different, but as regards the high sea, our conception has always been that *cabotage* should be free.

M. MONTARROYOS (Brazil; speaking in French). — That is one view.

M. HOSTIE (speaking in French). — In order to render the debate clearer I should like to confirm what M. Seeliger has said. It is inaccurate to speak of *cabotage* in connection with the question with which we are dealing. We are dealing with the reservation of transport traffic between ports situated on an international waterway and within the limits of one and the same State, or of several riparian States on the same waterway. This is not *cabotage*. In French the word *cabotage* is only applied to maritime navigation.

M. SCASSI (Greece; speaking in French). — As I have said, it was only because it was a convenient word that I used the term *cabotage*. I am perfectly aware of the fact that this word is only used in French for maritime navigation and that we should say *local transport*.

M. HOSTIE (speaking in French). — I will leave aside the text of Article 4, which is not of general interest;—it refers only to quite exceptional cases. I now come to Article 16, which deals with local transport between ports situated on international waterways within the limits of the territory of one and the same State. As the Delegate of Greece has said, it is undeniable that the whole tradition of European

law tends towards absolute freedom for local transport. This tradition was affirmed in the first place in the Treaty of Vienna; it was developed at Paris in 1856 and culminated in the Treaty of Berlin, by which Europe extended to vast domains in Africa her conception of absolute freedom of navigation on international waterways. This is the European theory, which I think has never varied. We see that the American theory is in sharp contrast with this European one. We have seen in a concrete instance a definition of these ideas, to which Professor Alvarez, with his talent and eminent authority, drew our attention at the very outset of our work.

Our task must therefore be to find a solution in the direction which he himself has indicated. This is the occasion, if ever, to decide to refer the question to the Sub-Committee on Articles 1 and 9. Besides, this Sub-Committee, whose labours are now well under way, cannot possibly come to a decision if you do not furnish it with the means of proposing general solutions for questions to which the distinction which it has been called upon to examine, may be applied.

M. PERIETZEANO (Roumania; speaking in French). — It is a fundamental question.

M. HOSTIE (speaking in French). — It is indeed a fundamental question, like that of Articles 1 and 9. But this Sub-Committee is not a drafting committee,—its task is to examine a number of closely-connected questions, and to offer you a solution.

The CHAIRMAN (speaking in French). — M. Hostie's proposal has the disadvantage that it cuts short the discussion before it has been pressed to its utmost limits, but nevertheless I am of opinion that it should be accepted. The Committee has specially appointed a Sub-Committee to examine very carefully the fundamental articles 1 and 9. Wisdom now bids us also refer the question under discussion to this Sub-Committee, which, with a profound sense of its great responsibility, will consider this question together with those which have already been submitted to it, and which are akin to it.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I should like to point out that this question is a very important one and that all of us have not expressed our opinions. We know how precious time is; we appreciate the wisdom of the Chairman, but we would beg him to postpone the discussion until tomorrow, in order that the subject may be dealt with thoroughly. When the discussion has been completed, we will not oppose a reference to a sub-committee, to which, moreover, I should like several persons to be added. I propose that the general discussion be continued before the matter is referred to the Sub-Committee, in order that the latter may be in possession of all our views.

Mr. H. O. MANCE (Great Britain). — Allow me to suggest a compromise which I hope will have the support of M. Avramovitch. I propose that the general discussion be adjourned until tomorrow, but that, before the discussion is resumed, the Sub-Committee, if it considers it desirable in order to hasten its decision with regard to the definition, may exchange views on the subject. Later, if after the general discussion we have not arrived at an understanding here, we may refer the question to a sub-committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In spite of my desire for conciliation I cannot accept General Mance's proposal. I cannot allow my right of discussion to depend on the wishes of a sub-committee.

M. ALVAREZ (Chile; speaking in French). — You can discuss here later.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am perfectly aware of the fact that I can discuss the matter here, and even at a plenary

meeting. But I do not see why the question should be referred to a sub-committee before all opinions have been expressed.

M. PLANAS SUAREZ (Venezuela; speaking in French). — After having heard my eminent colleagues from Chile and Brazil on the subject of what we call *cabotage* and distributive commerce. I should like to state that Venezuela has reserved *cabotage* for the national flag, and that therefore I cannot accept anything contrary to the express provisions of the laws of my country. However, on behalf of the Venezuelan Delegation, I wish to state that I support what my colleague from Chile has said.

M. DETŒUF (France; speaking in French). — I support M. Avramovitch's proposal. It seems to me essential that all of us should have the time to express our opinions to the Committee before the Sub-Committee begins to study the question. The Sub-Committee is quite in a position to consider this question thoroughly, because, as M. Hostie has said, the latter is intimately bound up with all the questions that have been submitted to this Sub-Committee, but it cannot do any useful work until it has learnt the opinion of the Committee and knows the arguments submitted on both sides. I therefore propose that the question be placed on the agenda for the next meeting, on the understanding that it will be referred to the Sub-Committee when the opinions of all have been expressed.

M. SCASSI (Greece; speaking in French). — I am not opposed to referring of the matter to a sub-committee, but I think with M. Avramovitch that all views should first be expressed.

The CHAIRMAN (speaking in French). — The discussion will be continued tomorrow.

The meeting adjourned at 8 p.m.

TENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Friday, April 8th, 1921, at 4 p.m.)

DISCUSSION OF ARTICLE 16 (CONTD.) — REPORT OF SUB-COMMITTEE ON ARTICLE 14 —
POSTPONEMENT OF DISCUSSION OF PREAMBLE.

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 16 (Contd.)

M. PIERRARD (Belgium; speaking in French). — At the end of yesterday's meeting the excellent proposal was made that Articles 4 and 16 should be referred for consideration to the Committee which is already examining Articles 1 and 9 and others. Yesterday's discussion was lively at times; speeches were made of a warmth hitherto unusual in this assembly, and the applause with which they were greeted on both sides showed how high feeling was running in the Committee. The application of the principle of reference to a sub-Committee would have been desirable, as it has hitherto produced tangible results for the other articles which we have discussed. It was suggested that the question should be brought up again in the General Conference, in order that each Delegate might express his views,—in order that each should, as it were, search his conscience in public. It is for this reason that I am speaking now.

I think that the Conference has arrived at a dangerous turn of the road. The situation is serious. We see two tendencies taking shape,—we perceive them at every step of our labours. On the one hand there is the tendency of certain States to uphold more liberal ideas, on the basis of their idealist conceptions. On the other hand there is the tendency of States which uphold less liberal ideas and which place in the forefront the defence of their national interests. The situation is serious, because during this discussion we have seen ranged under the banner of the States of Latin America certain European States whose interests may not be the same as those of South America. I will not enter into a discussion of the principles enunciated yesterday by M. Alvarez. Layman as I am in these questions of law, I have no wish to venture into the thick of a general discussion in which I should certainly singe my wings. I am guided only by my common-sense, and I hope Professor Alvarez will pardon me for putting before him these observations.

We have spoken of public law, constitutional law and international law. As regards the first two, in constitutional countries Parliaments make and unmake laws and constitutions, but we are not concerned with them here. International law, on the other hand, is based largely on international usage, and further, it depends on treaties concluded between States. Here it is not national political parties which are taking part, but the peoples themselves. At this moment I cannot, without some emotion, help drawing the attention of the meeting to the difficulty of questions concerning international treaties.

In 1914, when we Belgians made a stand—I hope you will pardon this digression—against the most formidable military organisation which has ever existed in the world,

and when Great Britain entered the war on our side, it was precisely in order to secure respect for a treaty which certain persons had called a *scrap of paper*, but I have no wish to dwell upon these questions. Peace to our dead! Peace to our enemies of yesterday! We have not come here to call up the past, we have come here to prepare the work of peace—the work of the future.

I spoke of the States of South America. My colleague and friend, M. Montarroyos, made one statement which impressed me very considerably; he said that under the constitution of his country, Brazil, local transport was reserved for nationals. My knowledge of the political history of the American peoples is very incomplete, but I imagine that when a provision of this kind was considered worthy to be inscribed in the constitution of a country, it was not exclusively a question of economic interests, which may vary according to time and circumstances, but probably of weighty political interests. I imagine the States of South America to consist of immense territories, certain parts of which have not yet been explored, and I tell myself that if these States authorise foreigners to establish navigation services within their territories, these foreigners would be open to the temptation to act as “conquistadores”, because all the States of America were created as a result of conquests in past centuries, and perhaps at the time when the constitutions were drawn up, there was still reason to fear foreign incursion. As regards European States, the situation does not appear to be the same. Here economic interests, and economic interests alone, do come into play. Is this Conference, which is assembled to prepare a work of progress, to declare bluntly that it will not take a step forward? Will those delegates who defend the principles to which I am myself opposed, not utter a single word in order to afford a glimpse of a more liberal system in the future?

Allow me once more to allude to my country, and do not think that I do so out of vanity. From the point of view of land and population, Belgium is one of the smallest States represented at this Conference. Before the war, she had reached the fifth place among the economic Powers of the world. I say this with pride, but I say it above all to draw the attention of certain States, both of Latin America and of Europe, to the reasons which caused this economic development which may be described as prodigious. Do not forget that whenever a monopoly is given by a State to certain of its nationals—for example, a monopoly of local transport—the advantages of this provision do not accrue to the country itself, considered as an entity,—they go chiefly to the holders of the monopoly. When the transport of goods from one point in a State to another is carried on only under the flag of that State, universal competition is removed, and as a result, much higher freight rates are charged than those which result from a regime of free competition. Who benefits by this artificial increase of freight rates? The shipowner or the company which holds the monopoly. Who suffers by it? The peoples themselves, who have to pay higher prices for goods than if trade were perfectly free. Before the war, Germany possessed the greatest length of railways in Europe in comparison with her superficial area,—she possessed 12 kilometres of track per 100 square kilometres. In Belgium we possessed 22—almost double—not to speak of numerous waterways which we possess besides. It is owing to this development of our means of communication, and thanks above all to the regime of freedom which we introduced into our law system, that we have progressed so rapidly in the path of civilisation, and in that of commerce and industry. I beg,—I will not say my opponents,—but those who do not share all our ideas on this subject, to reflect on this.

I will not dwell further on this point,—I know how precious are the moments of this Conference, but I ask you to give practical proof of conciliation. We are all obliged to make concessions,—we have done nothing else since the beginning of this Conference. Let us then try, before we separate, to pass a convention which can be accepted by all. We must not, as a result of irreducible claims, incur the risk of not obtaining the two-thirds majority which is necessary for the final vote. From the depth of my heart, I beg those who are not partisans of the liberal ideas which I am championing to utter one word which will allow us to hope that in the future—in a later Convention if we cannot realise it in this one—we shall succeed in establishing a more liberal regime. Do not be obdurate; remember that humanity must not march backwards, but forwards in the path of progress.

M. WINIARSKI (Poland; speaking in French). — The Delegate of Greece spoke yesterday of the principles of European law as regards local transport, and M. Hostie showed us that the principles of public law in America are radically opposed to those of European public law on this subject. Others, more competent than myself, can make the necessary corrections, but, if you will allow me, I will make some short observations on the point.

The truth is this :—Either European public law is similar to American public law, or, if it contains elements which are opposed to it, they have always been disputed. The French Revolution decreed that navigation and the right of passage should be free on the Scheldt for riparian States, and that access to the sea should be free for land-locked States. The Treaty of Paris of 1814 is silent on the subject of local transport, as is the Treaty of Vienna of 1815, but we possess evidence which enables us to place a definite interpretation on that silence.

When the Delegate of Great Britain moved the withdrawal of the amendment of the Delegate of Prussia, Baron Humboldt, the Commission decided to retain the wording proposed by the Prussian Delegate. This is noted in the Minutes (March 3rd, 1815) as follows :—

But the other members of the Commission were of opinion that the amendment should not be put in, as the text of Baron Humboldt did not appear to depart from the terms of the Treaty of Paris, the sole object of which was to free navigation from the hindrances which might be caused by a dispute between riparian States, and not to give any subject of a non-riparian State a right of navigation which would be equal to that of the subjects of the riparian States and which would not entail any reciprocity.

Such was the exact position adopted by the Congress of Vienna as regards rights of non-riparians, that is to say, rights of local transport.

Let us now see the practical effect of the Treaty of Vienna. This is of great importance for us, because those who founded this practice represented the living tradition of the Congress of Vienna. The Elbe Navigation Act of June 23rd, 1821 reserved local transport for nationals, and transport between riparian States for the riparians themselves. The Weser Navigation Act of September 10th, 1823 reproduces the same terms. I need not speak of the Rhine in this place. As regards the Danube, freedom to carry on local transport was authorised for the maritime sectors of that river in pursuance of various treaties with Turkey; but on December 2nd, 1851, a treaty was concluded between Austria and Bavaria in which these two riparian States reserved local transport for themselves. The Treaty of Paris of 1856, which has been cited here in support of the opposite claim, is silent on the subject of local transport. As this Treaty of Paris is comparatively recent, allow me to read Article 15 :—

The Act of the Congress of Vienna having established the principles intended to regulate the Navigation of Rivers which separate or traverse different States, the Contracting Powers stipulate among themselves that those principles shall in future be equally applied to the Danube and its Mouths. They declare that its arrangement henceforth forms a part of the Public Law of Europe, and take it under their Guarantee.

In 1857, in execution of the Treaty of Paris, the Delegates of the riparian States assembled and draw up a Navigation Act, Article 8 of which reserves local transport for the riparians of the Danube. The signatory Powers of the Treaty of Paris of 1856, who had only to take note of this Navigation Act concluded by the riparians, refused to do so, because the Delegate of Great Britain opposed the reservation of local transport, on the ground that this reservation was contrary to Articles 15 and 16 of the Treaty of Paris, and that the right of local transport could not be abolished wherever it already existed. Under the terms of the Annex to the Treaty of London of 1883, the right of reserving local transport was abolished, but, as you are aware, all the States did not accede to this treaty, in particular Roumania, who was opposed to the adoption of this provision.

What was said yesterday does not concord with actual practice. The interpretation allowing all flags to carry on local transport has been disputed. There is only one treaty which proclaims transport to be open to every nation,—the Treaty of the Berlin Conference of February 26th, 1885, relating to the Congo. This treaty lays

down that all flags may undertake any kind of transport and carry on both coasting trade and river transport. This is the only explicit general provision to this effect in the whole of public law. I think therefore that it would be at least dangerous for us to try here to contravene the principles both of America and Europe.

M. HOSTIE (speaking in French). — I wish to reply at once to one word which M. Winiarski uttered. I do not wish to return again to the past and refute his historical statement in detail, but there is a solemn act of quite recent date which expressly confirms European law in this matter,—the Treaty of Peace of Versailles, which applies to the Rhine, the Elbe, the Oder, the Danube and their tributaries—and the same applies to the other waterways which by subsequent treaties have been given the same standing as these rivers—a regime of absolute freedom, without expressing any reservation as regards local transport, except for temporary provisions which are subject to revision and are applicable only to certain particular flags.

M. WINIARSKI (Poland; speaking in French). — I regret that M. Hostie persists in raising the question of the Treaty of Peace, which is a very thorny subject; but since it has been mentioned, I must explain that the Treaty of Peace establishes unilateral obligations; that the terms which establish these obligations must in the future give place to the general convention which it is our task to draw up here; that in doing so we are in no way bound by the provisions of the Treaty of Peace, and that if it should happen that this convention cannot be established, these unilateral terms will lapse; they cannot be retained until reciprocity is established.

M. HOSTIE (speaking in French). — I cannot admit that interpretation of the Treaty of Peace. Article 332 and the articles which follow have been accepted by all the signatory States—Poland amongst them—as intended to form the basis of the General Convention which we are now preparing.

M. PERIETZEANO (Roumania; speaking in French). — I should like to point out that in this important question we find two parties,—the liberal party and the other, which has not been given a name,—the party of opposition. I would say rather that there is a liberal party and also a party which defends its liberty. In your view, the liberal party consists of those who wish to abolish the freedom of others, and we are the reactionary party. But until now I had thought that the liberal party was that which desired the maximum of freedom for all. This discussion has already lasted for two days, and I have not yet grasped the grounds on which the right in question is based. We have spoken of acquired rights, of treaties, of the weal of humanity. One alone of these three motives would suffice, if it were well-established. Before discussing them in turn I will refer to our task here.

Are you a kind of tribunal which judges between the rights of the various parties in court? Are you here to examine documents, treaties and any other instruments, in order to ascertain the rights of some parties over others? If you are, then we must have someone to hear us and give a casting vote. I consider that this Conference has met here in an endeavour to discover the best system to ensure the welfare of the peoples. You are called upon to determine exactly where the wall is to be erected which divides the freedom of each from that of his neighbour. The term freedom has, as you know, a very wide meaning, and is often used to cloak tyranny. At bottom it means simply the right to do anything which does not interfere with the freedom of others. We move in a cell which is limited only by the walls of our neighbour's cell. When we speak of increasing the freedom of one person we must see that that does not prejudice the freedom of another. It is only when freedom is won from nature that the general freedom of humanity is increased.

Having laid down these principles, I should like to say that when we came here we did not think that we had come to defend a suit; otherwise we should have brought with us all the papers and documents in support of our claim. We thought, on the contrary, that the terrible war which has taken place had abolished all injustice. We do not say that treaties have become scraps of paper, but that they have established rights, and that the mission of the League of Nations is to secure respect for these.

That is the part which you have to play. You have not to ascertain that certain parties have rights over others. We have just seen a king compelled to leave his capital in spite of the indisputable rights which he possessed. No-one dared to speak of the acquired rights of this citizen obliged to leave his capital. Why? Because after a frightful war it was thought, rightly or wrongly, that acts of injustice had been committed. But, if you accept acquired rights, you should begin by dismembering Roumania and Czecho-Slovakia. We do not dispute the fact that for centuries Transylvania has been under domination of other peoples. If we were to speak of acquired rights, France would have to reopen the question of Alsace-Lorraine.

It has been said that freedom of local transport is not inscribed in any treaty, and that consequently, as it is nowhere written that local transport is reserved, then it is not reserved. Therefore, as no treaty states that Roumania has the right to prevent entry into her territory without a passport, Roumania does not possess that right. In reality, countries have the right of sovereignty over their own territory, and in spite of freedom of navigation this right of sovereignty remains intact. If our efforts here fail freedom of navigation would not exist, but the right of sovereignty of the State would remain.

It has also been said that if freedom of navigation is assured it follows that freedom of local transport is also. We must examine this more closely.

The internal transport of a country—in Europe at least—is the subject of a monopoly as far as railways are concerned. In Europe no-one has the right to build railways without State authorisation. In America freedom to build has existed for a long time. What is the reason for this absence of freedom in Europe? It is that the railway industry is not like other industries. Each industry forms part of a long chain of other industries, beginning with raw materials and ending with the manufactured article. But the manufactured article of one industry is very often the raw material of another. The transport industry, however, is different; it is the one which connects all the links in the chain. Between any two industries there must also be transport. I should like to dwell upon this point, in order to show you that transport is the industry *par excellence*,—it is the industry through which the production of the country can be influenced. In order to make this clear, I should like to put before you a small problem regarding railway tariff classification. By what right are different tariffs fixed for different classes of goods? It costs no more to transport a ton of iron than a ton of ballast. Why should the carrier have the right to ask whoever gets into his cart: “What are you carrying in your sack?” Because this is the application of a royal right to encourage an impoverished industry by placing it upon the back of a prosperous one. You will see then that the transport industry is an industry through which it is possible to control the whole activity of a country. It is by manipulating tariffs that one side can be favoured at the expense of another. This is so true that, even in countries where railways are operated by private companies, the State gives the companies this royal right. There exists to-day a new transport industry,—aviation. Just as the transport of an article from one point to another within one and the same country used to be effected by a land-route, it is now becoming possible to effect the same transport by air-route. Do you now intend to claim, in virtue of the principle of freedom of local transport on international rivers, that a similar freedom of local transport by air may be enjoyed on air-routes, which after all are the equivalent of water-routes? You will resist the spirit of freedom in vain, and your efforts will be all the more fruitless because the aviation is as yet comparatively undeveloped, and when the Conference which will deal with this question meets, the spirit of liberalism will have made greater progress. If, therefore, you are so liberal to-day, you will be still more liberal to-morrow, and where shall we end?

Let us look at the matter from the point of view of those poor and retrograde countries which I am defending, those countries which, it appears, are opposed to the complete achievement of the work of this Conference. I confess that I desire this, but on one condition, namely, that there shall be neither conquerors or conquered; otherwise I should never have come here at all. If I had had to leave on the field of battle all my country's interests, I had better have stayed at home in the certainty that you would have taken everything without us. But the other side of the question arises. The representative of Belgium has shown us the state of prosperity to which

his country has attained thanks to absolute freedom. This is certainly a tempting example for other countries, and we should be inclined perhaps not to let it be imposed upon us but to imitate it in so far as it conforms to our own interests. The representative of Belgium has cited the experience of his own country, and has said : "Do as I do, and you will profit by it", and I may tell you that I prefer this language to that of acquired rights. But I am a little disappointed. Acquired rights do not make for the happiness of those over whom they have been acquired. We must not speak of imposing happiness, because happiness imposes itself. I cannot therefore reconcile these two things,—acquired rights and happiness.

Is the task of the Conference to ascertain what are acquired rights? M. Winiarski has said that these acquired rights do not exist, because they are not expressly mentioned, and have only been brought upon the scene by deduction. I am the more pleased to hear of this theory, because I wished to give a favourable reply to the Belgian Delegate, who has shown us that this method of discussion is really the best. We are here to discuss and convince, and not to enforce obedience with the help of a treaty; we are here to show that what we are inscribing in the Convention is in the common interest, but we are not here to coerce. If we were, you would not need our signatures; if you have made me the subject of a deal, you have no need of a second signature to clinch the matter.

Belgium is an admirable country from the point of view of economic progress. This progress is entirely due to the valiant and laborious efforts and the wits of her inhabitants rather than to her soil. As a matter of fact it is a flat country, ill-endowed by nature. In Belgium, wealth is the result of the labour of the inhabitants and of their industry, rather than of the gift of nature, as in Roumania, for example, where this wealth overflows in every field, and a little digging is all that is necessary in order to obtain it. I have visited Belgium, I have lived there, and I have only one word to say : If Belgium had been situated within the confines of the Musulman Empire, and if she had been incessantly ravaged by Turkish armies, I do not think she would be where she is now. Even to-day we are still defending ourselves against the invader, and we are spending our money to guard the frontiers of Europe instead of attending to our own affairs. I say this, not because I do not admire the policy of Belgium, but in order to show what a difference there is between that country and ourselves, and in order to explain why we are somewhat more reactionary.

I will return to my point. Local transport is a form of internal transport; it is a method of conveying an article from one point to another, and from this point of view it is immaterial whether the transport is effected by waterway, land or sea. Of course we ourselves had recourse to foreign help in order to proceed more quickly, since we wished to carry out what we ourselves found impossible to achieve. Fifty years ago there was not a single kilometre of railway in Roumania, nor was there a single engineer capable of constructing a railway, and we had recourse to the Germans. We applied to the Austrians, and they formed a shipping company to navigate between our ports. What does that prove? It proves precisely that we realised that we were not capable of doing by ourselves certain things which were essential for our country. But does this mean that we contracted an obligation, which would last as long as the world existed, to have those things done by foreigners which we could not do ourselves? When we ask you for the right to reserve local transport for national shipping, we do not mean that we intend to create a national merchant fleet ourselves, that we do not intend to give away the right of local transport for a limited time through the medium of a private concession. As regards aviation, we are at the present moment in process of granting a concession to a French company, but we have not said that so long as the world exists the French shall have the right to conduct aerial transport in Roumania. A concession for a limited time is one thing, an acquired right is another. We did not sign the treaty of 1815,—at that time we did not even exist; and now it is desired to impose upon us the rights acquired by a third party. We went to war to combat acquired rights. Here, in this Conference, we cannot invoke similar reasons. We have been freely called into an assembly, the liberal spirit of which we admire; we have never been prevented from saying our say. We have been allowed to use time which was precious for everybody to defend the interests of our country. This Conference is indeed a liberal one, and it is before this liberal Conference that we

come and lay the problem, with the words :—Do not impose upon us rules which we cannot accept. My reply to the Belgian Delegate is :—Wait and see what the future will bring forth! We will begin by granting the right of local transport to foreigners, perhaps in the shape of a concession; then, when we have passed a certain number of years of tranquillity, when we are, I will not say in the same state such as that of Belgium, because I cannot hope to live long enough to see it...

M. PIERRARD (Belgium; speaking in French). — I only hope you will.

M. PERIETZEANO (Roumania; speaking in French). — Thank you. We must take into consideration the work which Roumania must do to reach the same level as Belgium. We have fought for centuries. You have visited Spain. You have seen her magnificent cathedrals and her spacious monasteries. We have nothing like that in Roumania. All that was there has been destroyed, and if by chance you were to discover a poor little church in a valley, it is because its existence was unknown, otherwise it would have been destroyed like the others. In 1915 you have been speaking of devastations; in Roumania they have lasted for centuries, and I am not sure that they will not continue in another direction... To return to the subject,—later, when our merchant-fleet has been formed, we will perhaps reserve to ourselves the right of carrying on local transport.

In short, I consider that there is no such thing as acquired rights. The very reason for our presence here is to wipe out the injustice of the past, regardless of everything. If there really are suits to be judged, this must be done not here, but elsewhere; this is not the place to see whether the Conference, in establishing principles, has not injured certain States, and to see whether these States have, or have not, any rights to which to lay claim. We must really wait a little while, to ascertain the results of our Convention. I have no wish to vex anyone, but I must warn you of one thing, that you will obtain much more from our country by reason than by force.

Progress marches slowly. Let there be no mistake about it. Do you think that with this Conference, with this Convention, you have found the means to make progress advance at the rate of 100 kilometres an hour? No, those who know what progress is are fully aware of this fact; progress, I repeat, is slow. I should like to point out to the Conference one thing. If you withdraw your demand you will not waste much time, only that which will elapse between this and the next Conference. There you can assert your rights again. You may always call upon progress to continue its forward march. It cannot possibly be made to march back.

We ask you for a postponement,—for time to reflect, and you reply, “No, today, all or nothing”. If we grant you ninety per cent of what you ask, will you ruin all because you still want another ten per cent? I will not now enter upon a long and tedious discussion as to whether individuals are better qualified than the State to do certain things. This question has its advocates and its opponents. I will only make one comment,—in Belgium the railways are operated by the State, and in other countries by companies. It follows from this that the question of entrusting the management of them to individuals does not arise here. What we have to consider is whether the sovereign State is empowered to entrust their operation to whom it will. It may perhaps hand it over to an individual if it thinks necessary.

And now I will not take up any more of your time; I will only add one word more. The question is of such importance for Roumania that her acceptance of the Convention depends upon it. This is the reason why I have ventured to speak at some length. I ask you once more to allow us time to reflect. We will return to the subject at a later meeting.

M. ALVAREZ (Chile; speaking in French). — The Belgian Delegate has alluded to the ideas which I expressed at yesterday's meeting on the subject of acquired rights. I should like to say a few words in reply. I have already said that I do not wish to enter upon a dissertation on this subject, and I have tried to show as shortly as possible the purport of this expression. The Roumanian Delegate has added another explanation to mine, and has defined the meaning of my words “international law knows no acquired rights”. These words are not intended in the least to cast doubt upon

the validity of rights arising from treaties; they simply state that in international as in constitutional law there are no acquired rights when there is any question of altering the existing political or international order. I know of only one exception to this; it exists in American law. The independence of the States of the New World is considered by us as an acquired right, and it is acquired in such a manner that these States cannot lose it even with their own consent. If a State of Latin America, for example, wished to place itself under the protection of a European Power, it could not do so. Its independence is an acquired right. You will excuse me from entering into any further explanation of this subject. The Belgian Delegate has said that the Latin American States should consent, in the name of the principles of liberty, to the abolition of the right to reserve local transport. Allow me to say in the first place that the States of Latin America, like the United States, are proud, very proud, of the spirit of freedom and fraternity which animates them. From the very beginning of their independence, they have formed not only a *League* of Nations, but a *family* of nations, and they have repeatedly in treaties established simple and liberal principles which were then incorporated in international law. I repeat that we are proud of being essentially liberal countries which have contributed extensively to the development of international law in the direction of justice and freedom.

But the question of local water transport, like many other political or economic questions, is not a question of freedom. For example, could the States of Latin America ask the monarchical States of Europe, in the name of liberty, to abandon their system of government and adopt the Republican system, which is the system of freedom? That would be absurd, but this is just as true of local transport. It is concerned not with political liberty, but with the economic organisation and commercial development of each country. Our economic situation and system of commerce are such that our economic existence would be overthrown if we accepted any modification of the system of local transport at present in force. Obviously, I cannot claim to speak on behalf of Latin America, and therefore I cannot give the reply for which the Belgian Delegate asked me just now. But if he asks my personal opinion, I will tell him frankly :—I do not think that the States of Latin America are prepared, for the sake of a so-called principle of freedom which is in no way connected with this question, to introduce into their economic system such revolutionary changes as could not fail to bring the greatest disturbances into their existence.

M. REINHARDT (Austria; speaking in French). — After the speeches to which we have listened, brilliant both in the eloquence of the speakers and also in the intensity of their convictions, it is with a certain disquietude that I rise, and I will confine myself to stating my view in a few words.

I regard this question not from the point of view of the country which I have the honour to represent, but from a purely objective point of view which may be adopted by any country whatever. I ask myself simply whether we have come here to build or to destroy, and what is the task which we wish to achieve. I think this task is very clearly set forth and elaborated in the principles laid down by the Congress of Vienna, in the endeavour to extend the sphere of activity of international navigation and to facilitate that navigation as far as possible. The aim of the Conference is to define this task, the effects of which should be to enable us by means of mutual concessions to consider each other as equals in the matter of navigation. As Articles 4 and 16 are contrary to this principle, it seems to me most logical that we should wish to abolish them. I therefore fully support the proposal of the Japanese Delegation.

M. DE WALTER (Hungary; speaking in French). — Surely we are here to deal with the question of freedom of transit and communications. I ask you to excuse me from replying to the political question which has been put by the Roumanian Delegation.

M. PLANAS SUAREZ (Venezuela; speaking in French). — On behalf of Venezuela, I wish to express my approval of what my Chilean colleague has said.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — We also reserve local transport for the national flag, but we have signed treaties of reciprocity with neighbouring countries, the Argentine and Bolivia, and although the latter country has only one small port, on the River Paraguay, we considered that we ought to give proof of our attachment to these great principles by granting her the same navigational rights as a large country. We consider in principle that freedom of local transport cannot be granted to every country in the world, but the solution which we favour is that which grants the greatest possible facilities for navigation.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I have been struck by the asperity of the discussion which took place yesterday evening and is continuing to-day. We might be thought to be on a battlefield, in which the object of the struggle was to set up acquired rights over justice and equity.

If the Committee will allow me, I will reply briefly to certain delegates. My remarks will be very short, and I will endeavour not to try your patience, but I reserve the right to speak again in due course in plenary session. I shall in fact be obliged to speak several times, and I regret this, knowing as I do that plenary meetings should wear an aspect of unanimity and agreement.

The Delegate of Greece has spoken of customs which have been observed for a very long time and which are incompatible with the principles of the Treaty of 1814 and the Treaty of Vienna, which both create a *de jure* and a *de facto* situation. He then quotes the Covenant, which is bound up with the Treaty of Versailles, since the two instruments were drawn up by the same authors, and he concludes from this that the freedom of navigation stipulated in Articles 331 to 337 excludes the right to reserve local transport; therefore, according to him, all that forms a single whole. He argues from it that we must give up our liberty, that is to say the right of self-determination.

In support of his case, the Greek Delegate also cites the discussion on Article 5 of the Scheme of Organisation at which the decision taken at Geneva was recalled.

“Just as we cannot change the resolutions of the Geneva Assembly”, he says “so we cannot here change what already exists in the Covenant.” M. Alvarez, the Delegate of Chile, and M. Montarroyos, the Delegate of Brazil, have already replied to this at some length. I venture to add another observation. All the usages which were pleaded caused us, I will not say a feeling of anger, but a kind of repugnance, because they have been imposed on us and because we have struggled against them. We cannot recognise them.

M. Montarroyos very truly remarked that freedom of navigation must always be looked at from the point of view of freedom of commerce. This is our argument too. I will venture, by borrowing a phrase which has already been uttered here, to lay stress upon the fact that those on the other side who preach freedom of commerce are not in favour of freedom itself, but of freedom for the commerce which fills their pockets, because they possess the means of carrying on commerce. They were fortunate enough in the past to be in a position to make certain progress, and they wish to profit by it now.

The Treaty also has often been cited. I once had occasion to say that I regretted this. I respect certain things and certain persons, and for this reason I think we should as far as possible avoid raising questions which may cause irritation; we should seek rather to convince each other. For this reason, I cannot support M. Hostie's view that our right to reserve local transport could be prejudged by the Treaties of Versailles, St. Germain and Trianon. On other points I agree with him. We greatly appreciate the statement of the question by the Latin-American speakers. These countries are very liberal and their ideas very advanced; I will go so far as to say that in these matters they are more competent than old Europe. M. Hostie spoke of a European doctrine of absolute freedom. I do not think that that can be said to be a doctrine. Several of the previous speakers—in particular M. Winiarski, my Polish colleague—proved that there was no doctrine on this question, but only that there are certain documents in which it has never been possible to find that which it is sought to impose on us. M. Pierrard told us that, not being a jurist, he relied on his common-sense to prove to us that his country owed its prosperity to freedom.

He used this to make a stirring appeal to the spirit of liberalism, and to ask us to accept freedom of local transport on our rivers.

What the previous speakers have said is so clear that I shall not take long to prove that that which it is sought to impose upon us is not freedom, but a kind of economic slavery. The statements of the Delegates of Roumania and of Latin America, and even of certain European Delegates, are quite clear. When we are in a position to compete with you in world commerce, they say, we shall open our ports to you. To-day we cannot allow you to do as you like in our little home, which is a poor one, because if we allowed you to enter it, we do not know how much of it would remain ours. M. Reinhardt once again cited the Treaty of Vienna. For reasons which the Committee will understand, I feel irritated whenever Vienna or the Treaty of Vienna is mentioned. The Treaty of Vienna cost us dear, and for that reason, amongst others, we cannot accept it. As the Roumanian Delegate said, this treaty was made without us and against us.

In conclusion, I should like to refer to the admirable statement made to the Conference by our Chairman, M. Adatci. Speaking of the Resolution regarding the International Regime for Ports, he said that seaports are the country's eyes, ears and mouth. If they are,—that is to say, if they are essential for its existence and cannot be sacrificed to other countries,—we say *a fortiori* that transport between the ports of one and the same State cannot be handed over to others.

The CHAIRMAN (speaking in French). — Then in your view, M. Avramovitch, the terms of Article 332 of the Treaty of Versailles do not apply to river transport?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Yes, that is my view. That article deals with freedom of navigation and applies to transport between riparian States, but not to local transport. At the Commission of Enquiry in Paris, where I had the honour and pleasure of representing my country, our view was always that, according to Article 338, a convention could always be concluded treating of waterway transport in general, both local and inter-State. But we do not wish the terms themselves of the articles of the Treaty to be reproduced here.

The CHAIRMAN (speaking in French). — In your opinion, the General Convention with which we are dealing is referred to in Article 338.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — What was stated in the Treaty holds good as a term of the Treaty, but that does not imply that the text of the Treaty should be introduced into general conventions. In any case we are opposed to that.

M. PERIETZEANO (Roumania; speaking in French). — Article 338 of the Treaty of Versailles seems to me quite clear. It reads :—

The regime set out in Articles 332 to 337 above shall be superseded by one to be laid down in a General Convention drawn up by the Allied and Associated Powers...

Thus, if we found in Article 332 any provision whatever referring to waterway transport, the present Conference would be entitled to substitute for it whatever provision it liked. I am therefore right in saying that the Conference has full freedom to decide, and in calling upon it to do so.

The CHAIRMAN (speaking in French). — As was pointed out yesterday, every view has found expression (1), and the article has been referred to the Sub-Committee on Articles 1 and 9.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — When the question of referring it to the Sub-Committee was raised yesterday, I reserved the

(1) There was also the following amendment to Article 16, submitted by the British Delegation :—
Substitute for the words *carrying out* the words *a State to reserve to its own flag*.

right to propose the subsequent addition of Members to the Sub-Committee. I venture to propose the appointment of M. Perietzeano, Delegate of Roumania, to the Sub-Committee. The most divergent views will thus be represented. I should also like to ask that this Sub-Committee should not split up into smaller Sub-Committees from which certain delegates would be excluded. In other words, I ask that all the Members of the Sub-Committee should be invited to be present at the discussions.

M. ALVAREZ (Chile; speaking in French). — We are doing so. As regards small committees, consisting of a few persons exchanging views in informal conversation, the sole aim of such committees is to prepare the work and facilitate the task of the Sub-Committee. We shall be very pleased to have the co-operation of M. Perietzeano, the Roumanian Delegate.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — In the interests of our work, I ask that all Members of the Committee who wish to be present at the meeting of the Sub-Committee and who wish to speak, should be admitted.

M. ALVAREZ (Chile; speaking in French). — We do not object; Members of the Committee have already come and we have welcomed them.

The CHAIRMAN (speaking in French). — It is understood then that Members of the Committee may if necessary be admitted to meetings of Sub-Committees.

REPORT OF SUB-COMMITTEE ON ARTICLE 14

The CHAIRMAN (speaking in French). — As you know, we reserved Article 14, and a new text was to be submitted to us by a Sub-Committee (1).

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — The text which has been drawn up by the Sub-Committee, and which satisfies all views, reads as follows :—

Subject to any agreements to the contrary to which the State territorially interested is, or may be, a party, this Convention does not apply to the navigation of vessels of war or of those connected with the policing or administration of the river, or, in general, with the exercise of any public authority.

The CHAIRMAN (speaking in French). — I put the new text of Article 14 to the vote.

Article 14 was adopted.

POSTPONEMENT OF DISCUSSION OF PREAMBLE

We have now to consider briefly the Preamble, which is closely connected with Articles 1 and 9. The general feeling is that the Preamble should be referred to the same Sub-Committee as that which is considering those articles, but I think it would be well for some views to be expressed before we decide to do so.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think it is absolutely impossible for us to discuss the Preamble before we know how Articles 1 and 9 will be drafted.

M. DETŒUF (France; speaking in French). — I entirely agree with M. Avramovitch.

(1) See p. 176.

M. TSANG-OU (China; speaking in French). — I ask for this question to be postponed for a short time longer.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think it would be better not to refer the Preamble to the Sub-Committee now, but to reserve the question of referring it until after we have discussed Article 1. The two suggestions are approximately the same, but there is a shade of difference between them.

M. HOSTIE (speaking in French). — It is very important that the Sub-Committee, whose task is already sufficiently heavy, should carry it out in all freedom, and that its powers should not be hindered by limitations which are to a certain extent artificial. All these questions are really inseparable, and if we wish to arrive at an amicable solution, they must be discussed freely; otherwise when the Sub-Committee has finished its work, we may find the results incomplete, and may thus be obliged to refer the matter to a Sub-Committee once more.

The CHAIRMAN (speaking in French). — M. Avramovitch thinks that the Preamble must not be referred to the Sub-Committee now; he would like to wait for the result of the Sub-Committee's work on Articles 1 and 9. What does M. Alvarez think?

M. ALVAREZ (Chile; speaking in French). — My view is that we must deal with the Preamble at the very end of our work, because we must see what turn the discussion takes.

M. HOSTIE (speaking in French). — My one anxiety—and it seems to me a reasonable one—is not to hinder the work of the Sub-Committee, nor to create delays due to hindrances due to procedure. That anxiety should be shared by the Committee. Moreover, the desire for a general discussion is certainly a perfectly legitimate one. These two desires may be reconciled; all that is necessary is that the Sub-Committee's powers should not be artificially limited, and that we should continue to hold to the fundamental idea that the general discussion may begin at any moment, as soon as the work of the Sub-Committee is sufficiently advanced to allow of it.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — There is no question of hindering the work of the Sub-Committee or of prejudging the fate of any particular article; the aim is simply to establish a good method of procedure, and I think that what I propose is the best. This Sub-Committee intends to alter the contents of Article 1. Then a general discussion will open with the new text before us. We shall then refer the Preamble to the Sub-Committee. Why do you wish to refer it to the Sub-Committee now? If you do, it will prejudice the final decision of the Committee?

M. HOSTIE (speaking in French). — The Sub-Committee will not prejudice anything.

M. ALVAREZ (Chile; speaking in French). — I proposed that we should leave the discussion of the Preamble until our completed work is before us.

The CHAIRMAN (speaking in French). — I think this point has been fully discussed, and, as no-one else wishes to speak, I will put to the vote M. Avramovitch's proposal, which has been seconded by MM. Detœuf and Alvarez.

The proposal was carried (1).

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(1) The rest of the meeting was devoted to an exchange of views on the procedure to be adopted as regards the Draft Resolution on the International Regime for Ports. See the volume on this question.

ELEVENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Friday, April 15th, 1921, at 11 a.m.)

REPORT OF SUB-COMMITTEE ON ARTICLES 1, 4, 9 AND 16.

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

REPORT OF SUB-COMMITTEE ON ARTICLES 1, 4, 9 AND 16

The CHAIRMAN (speaking in French). — The Sub-Committee on Navigable Waterways, under the chairmanship of M. Alvarez, has held several meetings daily for several days. It has done some solid work. Thanks to its efforts, the Committee can at last enter in plenary meeting upon the discussion of Articles 1, 4, 9 and 16, which were submitted to this Sub-Committee, and which are the fundamental articles of the Draft Convention on Navigable Waterways. If we achieve our aim, we shall have completed a historic work.

I call upon Professor Alvarez to make his Report on the work of his Sub-Committee.

M. ALVAREZ (Chairman of the Sub-Committee on Navigable Waterways; speaking in French). — The Committee on Navigable Waterways, in appointing a Sub-Committee to consider Articles 1, 4, 9 and 16 of the Draft submitted for its examination, entrusted to it the fundamental portion of the regime of international rivers, which is one of the most complex and difficult questions of international law.

This complexity may be observed throughout history. The French Revolution is the landmark in the history of the navigation of international waterways. The decree of the Provisional Executive Council of November 16th, 1792, opened the Scheldt and the Meuse to free navigation. In addition, the Treaty of The Hague of May 16th, 1795, the Treaty of Peace of Campo-Formio and other conventions of the period of the Napoleonic wars show clearly the concern felt and the endeavours made by France to extend the principle of the free navigation of rivers; but nevertheless it was limited to riparian States.

The Treaty of Paris of May 30th, 1814, was the first which proclaimed the great principle of free navigation on international European rivers for the flags of all nations, whether riparians or not. On March 24th, 1815, the European Powers approved a general code of regulations on this question. These regulations are reproduced in Articles 108 to 116 of the Final Act of the Congress of Vienna of June 9th, 1815. Since that period, various other important Acts have been passed regarding freedom of navigation on International rivers. The 15th Article of the Treaty of Paris of 1856, whilst extending to the Danube the principle proclaimed by the Congress of Vienna, declared that *this provision is henceforth a part of the public law of Europe*. The Act of Berlin of 1885, which applies the same rule of freedom of navigation to the Congo and the Niger, again declares that this rule is a part of *international public law*.

The principle of freedom of navigation on rivers has not evolved in the same manner in the American Continent. Freedom of navigation on international rivers has been admitted there, not as an extension of the European principle, but as a concession accorded voluntarily by the riparian States through the medium of *inter*

partes agreements or of legislative acts. In this connection the objection raised by the United States plenipotentiary, Mr. Kassen, to the Draft Preamble of the Act of Berlin of 1885 is worthy of note. In a letter dated from Berlin, December 6th, 1884 he wrote as follows to the Secretary of State, M. Frolinghuysen, the Plenipotentiary of the United States :—

The original draft implies the admission that the principles of the Congresses of Vienna and Paris regarding the free navigation of international rivers *have passed into the domain of public law* as a result of their application to a large number of rivers in Europe and America. To this I objected that hitherto we have never admitted the right of any European Congress to regulate, directly or indirectly, the rights applicable to American jurisdiction. My scruples were respected, and the phrase was altered by the Committee.

Although the name *America* is used in this letter as meaning the *United States*, the statement is equally applicable to all rivers of the American continent.

The differences between European and African public law on the one hand and American public law on the other, as regards navigation on international rivers, may be summed up as follows :—In Europe, the principle of free navigation on international rivers is almost absolute, and is, moreover, usually enunciated in the conventions concluded between the Great Powers. As regards the regime to which free navigation is subject, recourse has sometimes been had, in determining it, to Commissions which even include Delegates from non-riparian States. In the New World the question is governed by a number of conventions between riparian States, and also by certain legislative provisions of these States. Thus it cannot be said that the principle of free navigation is in the position of a recognised principle there; moreover, the system of administrative commissions is unknown. There are also other differences between European and American public law; in particular, in America local transport is always reserved for the national flag.

Such was, in outline, the position as regards free navigation on international rivers before the Great War. With the establishment of the League of Nations there opens a new period. The Covenant of the League lays down that for the development of co-operation between States, the latter will make provision *to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League...* (Article 23 e). The Treaty of Versailles, in the first two sections of part 12, relating to *ports, waterways and railways* lays down general principles for the navigation of certain rivers, in particular the Elbe, Oder, Niemen, Danube, Rhine and Moselle. The Treaty of St. Germain, in the first two sections of Part 12, also aims at regulating matters connected with navigation on certain rivers, particularly the Danube.

The Treaties of Peace of Versailles and St. Germain have thus established the basis of a new public European Law as regards the navigation of rivers in Eastern Europe. Article 342 confirms this affirmation. It reads :—

On a request being made to the League of Nations by any riparian State, the Niemen (Russtrom—Memel—Niemen) shall be placed under the administration of an international Commission, which shall comprise one representative of each riparian State and three representatives of other States specified by the League of Nations.

But none of the riparian States of this river took part in the Treaty.

Finally, side by side with this new European public law, there exists, unchanged, the old American public law on the same question.

The Assembly of Geneva, in conformity with Article 23 of the Covenant, passed a Resolution for the summoning of the present International Conference to regulate, among other matters, the question of the free navigation of international rivers. The Barcelona Conference has therefore to draw up an Act of even greater importance than that of the Congress of Vienna of 1815, in the sense that it will be applicable not only, as was that instrument, to the rivers of Europe, but to all those waterways throughout the world whose international character is recognised (Article 338 of the Treaty of Versailles). Here is a first source of difficulty for our Conference, and the task is still further complicated by other factors. It is desirable to point them out because they show clearly the extent and complicated nature of the question with which the

Sub-Committee on Navigable Waterways was faced, and also the means to which it had to resort in order to find the solution.

(1) To begin with, there exist between the rivers of the various continents certain radical differences due to the diversity of geographical and economic conditions. These necessitated separate regulations. [See in this connection the Statement submitted to this Committee on March 31st by the Chilian Delegation (1).] Let us take as types three rivers,—the Danube, the Amazon and the Amur. The difference between these rivers from the point of view of navigation, situated as they are in three different continents, is at once obvious. Nay, even in the interior of a continent the situation may vary in the case of each river, according to the hydrographic, political and economic conditions of the countries which it traverses.

In spite of this diversity, rivers can be classified. As certain delegations have pointed out, there are two main categories of rivers : (a) those of *general concern*, navigation on which concerns a large number of countries, and (b) those of *common concern*, which are of particular concern only to the riparian States. To the first category belong all the rivers referred to in the Treaties of Versailles and St. Germain, and those subjected to an International Commission upon which non-riparian States are represented. The remainder belong to the second category.

(2) Second complicating factor. Since 1815, circumstances have changed considerably as regards freedom of navigation on rivers. The peoples are constantly drawing closer together, and commerce and industry have developed enormously; railways, which are both rivals and auxiliaries of navigation, have developed. Finally, technical improvements and the employment of waterways for purposes of industry and irrigation are another new factor, the importance of which varies in different continents and regions. It is clear that the employment of water for irrigation is easier in America than in Europe, and that it is easier in Eastern than in Western Europe.

(3) There is another factor which adds greatly to the difficulty of regulating navigation on rivers; it is the diversity and, in some cases, even the antagonism of the interests of the various riparian States on one and the same river as a result of the different geographical situation and economic conditions of these States. Here again we notice the distinction between Europe and America. In Europe the interests of the riparian States on the same river some times present almost irreconcilable antagonisms, even in fundamental questions such as the conditions of navigation, the works to be undertaken for its improvement, and so on. In America, almost the reverse is the case. The interests of riparian States are rarely in conflict; they are often in harmony, and the States can easily agree together to regulate all questions pertaining to navigation.

(4) Fourth complicating factor. There is also a conflict between the rights which the riparian States claim over the river, and which they desire to see respected, and the interest of third parties in rendering its navigation as easy and free as possible. In other words, there is a conflict between the right of sovereignty over the river possessed by the riparian States and the demands of third parties that this right should be, if not sacrificed, at any rate subordinated to the general interest.

The task entrusted to the Sub-Committee was rendered still more difficult owing to the fact that the problems to be solved are closely inter-connected, and any principle on which an agreement might be reached inevitably prejudged some other point which still remained to be settled. How did the Committee surmount all these difficulties? The first conclusion which it drew from the preceding facts was that it is impossible to set up a detailed system of regulations for the free navigation of rivers; even if this were possible, it would raise far more difficulties than it would remove. The needs of the States are constantly changing, and cannot be forced into a rigid framework.

The Sub-Committee therefore considered that it could only lay down guiding principles. The rest would have to be left to continental or regional agreements, particularly agreements between riparian States and the rules enacted in navigation acts for certain rivers. In laying down these guiding principles, *bona fide* claims and the

(1) See p. 20.

requirements of custom would have to be borne in mind; otherwise obstacles would constantly be encountered in the application of any system of regulation, however precise.

In laying down principles to govern this matter, the most formidable problem encountered was the conciliation of the opposing interests of States. National sentiment is everywhere most intense, and this sentiment demands that the national sovereignty should be respected and that all other interests, including the general interest, should yield before it. The long and interesting discussion which took place in the Sub-Committee made clear the need for finding a just mean between the national interest of each State and the general interest, which is after all only the interest of all; this compromise, at times exceedingly difficult, has been successfully effected, often with unanimity. It was thought that in this compromise certain ideas should not be carried too far, particularly the idea that, in order not to appear reactionary as compared with the Congress of Vienna, the Convention must perpetuate more liberal principles than those established in 1815.

In this spirit, and with a view to facilitating its task, the Sub-Committee appointed a small Committee, and both have worked unceasingly; often the small Committee even continued its labours far into the night. The desire of both was to justify the confidence with which you had honoured them.

The first part of the work to be dealt with by the Sub-Committee consisted in finding a definition of international rivers; that is the object of Article 1. The question is extremely difficult and of a technical, rather than of a legal character. After arduous efforts, an agreement was arrived at on this subject, to the satisfaction of everybody.

Equally great was the difficulty of arriving at an agreement on a classification of international rivers. This subject was of very great concern to certain European and American delegations. The Sub-Committee took as a basis an interesting draft scheme formulated by M. Detœuf, the distinguished French Delegate (1), and adopted the text of Article 1 *a*.

The third part of our work consisted in determining the rights and obligations of riparian States, a matter which is dealt with by Article 9 of the Draft. It was necessary to lay down the general principles governing the obligation incumbent upon riparian States to abstain from placing obstacles in the way of navigation; to remove obstructions to it; to maintain navigable conditions on rivers; and finally to undertake all works necessary for improvement.

After a preliminary discussion the Sub-Committee instructed the Rapporteur, M. Montarroyos, to submit a preliminary draft which would serve as a basis for discussion. It was this question which occupied the Sub-Committee for the longest time, for this it was which brought out the most divergent tendencies between the various delegations, particularly between the European delegations. Finally we were able to draw up the text of the article which is before you.

The Sub-Committee also dealt with the questions treated in Article 4 of the Draft, which relates to local and inter-State transport, or, in other words, transport traffic between the ports of one and the same State and transport traffic between the ports of the various riparian States of a river.

It was desired to recast in a single article the questions dealt with in Articles 4 and 16 of the *Green Book* Draft. As the Sub-Committee could not arrive at agreement on this point, it appointed a small Committee to find a formula which would satisfy everyone. This draft will be submitted to you direct.

The members of the Sub-Committee could not agree regarding a Japanese amendment proclaiming free navigation on tributaries of international rivers. It was therefore decided that the matter should be settled by a special protocol. A special protocol will also be prepared in order to satisfy those who advocate freedom of navigation on national rivers.

Finally the Sub-Committee considered the contentions submitted to it by the Delegations of China and India (2), the aim of which was to establish regulations as

(1) See p. 90.

(2) See text proposed by the Delegation of India, p. 69, and Chinese Delegate's remarks, p. 199.

exceptions for certain rivers, the conditions of which are of an exceptional nature. This article, if adopted, could be inserted at the end of the Draft Convention.

I will not go into the details of the provisions of the articles submitted to you for consideration. The Rapporteur, M. Montarroyos, who has taken so active and intelligent a part in our labours, will inform you on this subject.

On behalf of the Sub-Committee, I have the honour to submit to you the results of these labours. They bear the impress of steady endeavour and a desire for conciliation, they are calculated to satisfy the needs of all continents, all regions and even all countries. You must not, however, regard them as a mere haphazard mixture of ideas, but as a happy compromise, a *media sententia*, to use the expression employed in the Proceedings of the Naval Conference in London in 1909.

As regards Articles 1 and 9 of the Draft, the Swiss Delegation stated that it was not in agreement on certain points, because the terms employed in these articles would not, as far as Europe was concerned, respect existing Conventions which, in its opinion, should be respected.

I beg you, on behalf of the Sub-Committee, to take all the above-mentioned circumstances into account, in order that you may avoid as far as possible any discussion which may cause the Draft to lose its uniform character, and in order that you may give your approval to the principles on which the delegations composing the Sub-Committee have agreed.

If the Committee on Navigable Waterways succeeds in the task of approving a Draft Convention on the free navigation of rivers, it will have given the world practical evidence that, with the aid of goodwill, it has been possible to arrive at an agreement on one of the most difficult questions of international law. It will also have shown the world that in future any question may be settled by convention if the States realise the advantage of being guided by the general interest, and are willing to sacrifice their national interests to it so far as may be necessary.

The CHAIRMAN (speaking in French). — Your hearty applause makes it needless for me to add anything, but I wish, nevertheless to give my warmest thanks to M. Alvarez, the Chairman of the Sub-Committee, whose task has been most difficult, for the pains which he has taken and for his practical methods, which have resulted in the presentation of a Draft which has secured a unanimous vote. Like M. Alvarez, I hope the Committee will as far as possible avoid discussion and seek to reach agreement as rapidly as possible, in order that we may submit our text to-morrow to the plenary meeting. Having expressed this hope, I offer M. Alvarez my sincere congratulations on behalf both of the Officers of the Conference and of the Committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I also wish to thank H. Alvarez very warmly for the important work he has done and for his conciliatory efforts.

The meeting adjourned at 12.50 p.m.

TWELFTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Friday, April 15th, 1921, at 3.30 p.m.)

DISCUSSION OF DRAFTS OF ADDITIONAL PROTOCOL — DISCUSSION OF ARTICLE 1 APPOINTMENT OF ASSISTANT RAPPORTEUR

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF DRAFTS OF ADDITIONAL PROTOCOL

The CHAIRMAN (speaking in French). — M. Alvarez, Chairman of the Sub-Committee, announced to us this morning that there was a separate Draft Protocol on national navigation.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The Preamble of the *Green Book* contains a number of provisions, some concerned with principle, others directly binding on waterways which are not considered national in the sense of the *Green Book*, but which are nevertheless subject to the terms of declarations and even of definite engagements. On this point a number of delegations, particularly the Netherlands Delegation, seconded by several others, showed, by their amendments, a desire to go further and include in the Convention itself provisions entailing freedom of navigation and equality of treatment on national waterways. On the other hand a number of delegations considered that the Convention should be confined to the regulation of the régime of waterways of international concern, and that it should leave at the free disposal of States, without any restriction whatever, waterways not considered as of international concern.

The Preamble and the various questions raised in connection therewith, and also in connection with Articles 2 and 3, have not so far been considered by the Committee, as it considered that it should wait to hear the result of the work of the Sub-Committee under M. Alvarez before taking a decision.

It appears impossible at present to insert in the Convention itself terms relating to national waterways without rendering it impossible for certain delegations to accept the Convention; and on the other hand it would be a great pity not to meet the desires of certain of the delegations who do not wish to limit the application of the principles of freedom merely to international waterways. In view of these considerations, the following system has been proposed :—

Nothing concerning national waterways is to be inserted in the Convention, but a separate protocol will be prepared dealing with them. In accordance with a precedent used in connection with the Court of International Justice, this separate protocol will only be open for the signature and adherence of those Powers which are Contracting Parties to the Convention on the International Régime of Navigable Waterways, but, on the other hand, these Powers will in no way be bound to sign this separate protocol or adhere to it. In this way those would be satisfied who desire to set up more than a mere régime of international waterways, but the fate of the Convention would not be jeopardised.

Moreover, it is obvious that if this system were adopted, there would be nothing to prevent those delegations who do not wish to sign this Protocol or adhere to it,

at least for the moment, from voting the constitution of the Protocol in order to obtain the necessary majority; their vote would in no way imply any engagement whatever on their part to sign or adhere to it. It would simply be done in order to allow those delegations who desire it to express their opinion.

That is the principle adopted by the Sub-Committee, which, however, has not had time to discuss the details of the text of this Protocol, and has asked me to draw up a draft, with the sole object of putting its ideas on paper to serve as a basis for discussion. The Swiss Delegation has also prepared a draft, and I will read you the two texts; in order to simplify the discussion, I will then endeavour to make clear the difference between the two texts, not so much from the point of view of form, of the legal aspect, as from that of substance, the technical aspect. The following is the text which I have drawn up :—

Those of the High Contracting Parties who sign the present protocol or accede to it, mutually undertake, subject to reciprocity, to grant each other the same rights and to subscribe to the same obligations on the navigable waterways situated under their sovereignty or authority and not considered as of international concern, as the rights and obligations stipulated between all the High Contracting Parties in virtue of Articles 2, 3, 4, 5, 8, 10, 12, 13, 14, 15, 17, 18, 19, 24, 25 and 27 on navigable waterways of international concern.

In the application of the present provision the expressions *navigable waterways not considered as of international concern* and *navigable waterway systems not considered as of international concern*, shall be substituted for the expressions *navigable waterways of international concern* and *navigable waterway systems of international concern*, in the text of the said articles.

It is also understood that those provisions of the above-mentioned articles which deal specially with the navigable waterways of international concern referred to in Article 1 (a) shall not be applicable to the navigable waterways referred to in the present Protocol.

The following is the text proposed by the Swiss Delegation :—

The Contracting States to the Convention on the Regime of Navigable Waterways of International Concern, being desirous of applying to the waterways not considered as of international concern in the said Convention and situated under their sovereignty or authority, the principle of freedom of communications laid down in Article 23 of the Covenant of the League of Nations, grant, by the present article, on the said waterways, freedom of direct import and export transport traffic for persons or goods, by vessels of any kind, under conditions of perfect equality between the vessels of the Contracting States, it being understood that the granting of national treatment does not confer on the State to which it is granted any right in respect of the practice of import and export transport traffic other than the free circulation of its vessels flying the national flag under conditions of equality with those of the co-contracting State, using, in their existing state, those waterways which are open to the public, and conforming to the laws, regulations and usages of the country in the same manner as the nationals of that country.

In the first place there is one great similarity between these two texts, namely, that the procedure is the same in both. From the point of view of legal expression, a certain number of slight alterations may perhaps have to be made in both, but I think I am interpreting the intention of the Swiss Delegation when I say that in both cases it is a question of an optional protocol, and that only the Contracting Parties to the General Convention may sign this optional protocol; further, those Parties are in no way obliged to sign it.

As regards substance, the question is to ascertain what are the rights which the Contracting Parties wish to establish in respect of waterways which are not of international concern. On this point I think there are two substantial differences between the texts. In that of the Swiss Delegation, if I read it aright, Article 2, which involves freedom of navigation, and Article 3, which involves equality of treatment, are applied with certain restrictions which are a little greater even than those laid down in Article 4. Moreover, the text of the Swiss Delegation contains nothing granting equality of treatment in ports and the free use of ports. I thought it advisable to refer to Article 8 in my draft, because, in my view, free use of ports (with equality of treatment) should be considered as an indispensable adjunct to the free use of waterways. Then again, before the text is considered, I think an understanding would have to be reached as to what the various countries which are prepared to sign this Protocol intend to grant as rights. As regards freedom of navigation I think agreement is almost unanimous,

as also on the subject of equality of treatment. As regards the free use of ports and equality of treatment in the ports, I think the two texts do not agree...

M. VALLOTTON (Switzerland; speaking in French). — I agree as to the principle. I wished to show this by making the wording as clear as possible.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — There is another point,—the settlement of disputes. The text proposed by the Swiss Delegation does not make it quite clear that disputes are to be settled in the same way as for international waterways.

M. VALLOTTON (Switzerland; speaking in French). — I put this question aside.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The text which I have presented provides for the establishment of the same method of settling disputes. I think these are the only two points on which the texts differ; but independently of the text I think we should have to ascertain the opinion of the Committee on these two points, more particularly of those members who are prepared to accede to the Protocol. We could then see from the point of view of drafting which of the two texts can serve as a basis for discussion.

The CHAIRMAN (speaking in French). — I thank the Secretary-General of the Conference for the text which he has been good enough to draw up. At Geneva, a question of capital importance was solved in connection with the Permanent Court of International Justice,—a question of the judicial body which should arbitrate in international disputes. We discussed for three weeks, but fortunately our discussion produced what we named the Geneva Protocol,—introducing compulsory jurisdiction. In principle, the agreement which was reached there leaves full freedom to all nations but also shows some slight moral and theoretical advance. I think we may all agree here to the same conditions and accept this principle, which does not compel any nation to contract obligations.

M. VALLOTTON (Switzerland; speaking in French). — I merely wish to add a few words to tell you what happened. Obviously ideas take their own course, and M. Haas and others also had ascertained that we were all of the same opinion,—that the solution of the difficulty in connection with navigable waterways would be found in the establishment of an optional protocol. I venture to recall the fact that at Geneva it was the Swiss Delegation which proposed this solution in connection with the institution of a compulsory Court of Justice through the signing of an optional Protocol rendering the jurisdiction of this Court compulsory for signatories only. I must tell you that I had no intention of competing in any way with our Secretary-General, with whose text I was unacquainted when I drew up my own; my object was, in view of the short time at our disposal, to try to facilitate the solution by proposing as simple a text as possible. I shall personally be delighted if the majority support the view of our Secretary-General, according to which the settlement of disputes, even in connection with this question, would take place under the auspices of the League of Nations. If I did not mention this, it was in order to meet halfway States who were perhaps unfavourable to the idea, and to show that it is possible to begin with free circulation, even if the settlement of disputes is effected otherwise than by means of the formula which we have adopted elsewhere. You will have noticed that in order to make quite clear the lines upon which this will take place, I have added two draft protocols (1). The text of these two protocols is copied almost

(1) The two texts read as follows :—

PROTOCOL OF SIGNATURE OF THE ADDITIONAL ARTICLE GRANTING FREEDOM
OF COMMUNICATIONS BY WATERWAY

(*Annex 1a to the Convention on the Regime of Navigable Waterways of International Concern.*)

(Proposed by the Swiss Delegation.)

"The Members of the League of Nations and members of the technical organisations or those invited to sign the present protocol, through the undersigned, duly authorised thereto, declare that

exclusively from the texts adopted at Geneva. We have thus in this respect a precedent accepted by the political assembly of the League of Nations, and we shall thus be certain that if the idea meets with the approval of the majority, we shall in any event be sure of not committing errors from the legal point of view. In my view the first protocol simply implies recognition of the principle; the second goes a step further, and perhaps only a small number of States will sign it. According to this Protocol the signatory States recognise the principle, and, subject to the usual formalities, undertake to put it into force in their own territories at once.

M. DETCEUF (France; speaking in French). — I quite agree regarding the principle of the proposal. I merely wish to point out that the additional article proposed by M. Vallotton begins thus :

The Contracting States to the Convention on the regime of navigable waterways of international concern, being desirous to put into application...

In fact, the wording of this article would lead us to suppose that it is all the Contracting States which are taking the measures in question. I ask that the matter shall be made clearer by saying, as indeed the Secretary General, has done, *those of the Contracting States who think fit...*

M. VALLOTTON (Switzerland; speaking in French). — That simply means the signatories of the Protocol, and results from the fact of signing.

M. DETCEUF (France; speaking in French). — The wording may lead to confusion, and I think it would be advisable to state whether the signatories of the Protocol acceded.

M. LELY (Netherlands; speaking in French). — The solution which has been provided in respect of Article 2 obliges me to withdraw the amendment which I had put in to the same effect (1).

M. BIGNAMI (Italy; speaking in French). — The Italian Delegation intends to sign this Protocol on condition that it is also able to sign the Convention relating to navigable waterways. I will venture, however, to submit an observation regarding

they accept freedom of communications by water on waterways not considered as of international concern, as instituted by the Additional Article forming Annex (1) to the Convention on the Regime of Navigable Waterways of International Concern approved by the vote..... of the Conference... at Barcelona on..... 1921.

"The present Protocol, which has been drawn up in accordance with the decision of the Conference..... is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory Powers.

"The ratification shall be deposited in the archives of the Secretariat of the League of Nations.

"The present Protocol shall remain open for signature by the States Members of the League of Nations or of the technical organisations, or by States invited to do so.

"The article attached hereto shall come into force at the time of ratification unless any other date be mentioned in the Act of Ratification.

"Done at Barcelona..... 1921.

"(Date and signature)"

Note by Swiss Delegation :

"(The signature of the above Protocol shall be optional.)"

OPTIONAL CLAUSE OF THE PROTOCOL OF SIGNATURE

(Annex 1 (b) to the Convention on the Regime of Navigable Waterways of International Concern.)

(Proposed by the Swiss Delegation.)

"The undersigned, being duly authorised thereto, further declare on behalf of their Government, that from this date they accept as compulsory "*ipso facto*", and without special Convention for that purpose, freedom of communications by water, in conformity with the Additional Article, Annex 1 (a) to the Convention on the Regime of Navigable Waterways of International Concern, in the following terms :—

"On behalf of (name of State) I declare that I accept as compulsory "*ipso facto*" and without special Convention, from..... as regards any other Member or State which accepts the same obligation, that is to say, simply on condition of reciprocity, for a period of (five) years, freedom of communications by national waterway, in conformity with the Additional Article (Annex 1 to the Convention on the Regime of Navigable Waterways of International Concern)."

"Done at Barcelona..... 1921.

"(Date and signature)."

(1) See p. 44.

the Protocol proposed to us by the Swiss Delegation. It seems to me that when we speak of reciprocity, it would be better to add the words *without any prejudice to the rights of their full and entire sovereignty*. This idea may be understood in the text proposed to us, but I think it would be even better for it to be more clearly expressed.

I think it is also necessary to make a few alterations in Article 3, if it is to be mentioned in the Protocol. Article 3 refers to equality of treatment; I think that it is going too far to grant absolute equality on the national waters of a State to the nationals, property and flags of other States. We do not think we can grant this complete equality of treatment, because we consider such a decision might lead to serious difficulties.

Finally, we should like the reference to Articles 5, 10, 12 and 19 to be omitted. As regards the other articles we have no comments or objections to make.

The CHAIRMAN (speaking in French). — In my opinion the Committee should concentrate its whole attention on the principle of establishing this separate Protocol, if I may call it so.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — There is one point, resulting from an observation made by M. Vallotton, which must be cleared up. It must be pointed out that a vote in favour of the introduction of this Protocol does not imply that the Protocol will be signed forthwith. In other words, delegations may approve the Protocol without undertaking to sign it at once. This is all the more natural, as when the Governments were invited to send representatives to this Conference, nothing more than a recommendation was in question, and the Governments must be consulted before any signature can be given.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I will go even further, and say that the vote in favour of this Protocol should in no way signify on the part of the States which approve it, any intention of signing it at any date whatever. I may remind you that at least two-thirds of the votes must be obtained for a Convention to be valid.

The CHAIRMAN (speaking in French). — In the Geneva Protocol it is stated that *the present Protocol shall remain open for the signatures of States...* without any fixed period for so doing. Consequently a State might wait a hundred or even two hundred years before deciding to sign.

Does the Committee think that we may now proceed to consider the contents of the Protocol itself?

M. TSANG-OU (China; speaking in French). — If the parties concerned accept the Protocol, will it be necessary for them to conclude special Conventions?

The CHAIRMAN (speaking in French). — Certainly not.

M. TSANG-OU (China; speaking in French). — Then the present Protocol will constitute an engagement undertaken between the signatories?

As regards another point, are we to agree that the terms of *all* the articles mentioned in the Draft Protocol apply to national navigable waterways? To state my question more exactly: Can a State accept Articles 2, 3 and 4, for example, and not Articles 13, 14 and 15?

Mr. H. O. MANCE (Great-Britain). — The point raised by the Chinese Delegate touches very closely on a small point that I intended to raise. I may mention that the British Delegation fully approves of this idea of a protocol, but the small Committee which I hope will be appointed, to deal with it—thus avoiding lengthy discussion here—will have to bear in mind the relative advantages of a protocol couched in very liberal terms, signed by a certain number of States, and a protocol containing perhaps slightly less liberal terms, signed by a much larger number of States. I understand that the Protocol must be accepted *en bloc* if it is accepted at all. The only other

question that will arise is one which of the Delegate of Italy perhaps had in mind, that of charges. These are excluded from the Draft presented by the Secretary-General, but the question is to a certain extent left open in the Draft presented by the Delegate of Switzerland. The difficulty, I imagine, arises from the fact that the waterways have been constructed at the expense of the State, and in some cases the tolls have been remitted altogether. The question therefore arises whether, if you allow foreign vessels to use these waterways, they ought not to bear charges corresponding to what might have been reasonably levied by the State, had it looked upon the waterways as a commercial undertaking. I do not propose to suggest a solution, but when the Sub-Committee considers this, I think it may be one of the critical points, and I therefore wish to draw the attention of the Committee to it.

M. VALLOTTON (Switzerland; speaking in French). — Article 36 of the Statute of the Court of Justice reads as follows :

The jurisdiction of the Court comprises all cases which the parties refer to it, and all matters specially provided for in treaties and conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognise as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning :

- (a) The interpretation of a treaty;
- (b) Any question of international law;
- (c) The existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In my opinion, that constitutes an analogy with the matter now before us. Some States will declare themselves willing to recognise the principle; others will say that they are quite prepared to recognise it to the full in their own territories; others, again, will point out—as one delegation has done—that they do not agree with the majority in accepting all the obligations suggested, for example, by M. Haas. If, therefore, we wish this innovation to have its full effect, we must give this institution more elasticity by establishing first a protocol simply recognising the principle, and secondly an entirely optional protocol, and allow those States which will not sign this second protocol involving an immediate obligation, to pass special conventions, the terms of which may be fixed according to whether these States accept any given convention included in our general scheme.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — Neither M. Vallotton nor myself need defend the respective merits of our texts, as we are not concerned here with any question which might involve the pride of authorship; and as far as I am concerned, if I have introduced the greatest possible number of articles, it was because it is always easier to omit than to add.

The particular point as to whether resort must be had to a protocol of this kind in order to allow a State to place any particular waterway at the disposal of another State seems to me entirely superfluous. It is quite easy for States to conclude conventions between themselves; the essential aim is to obtain at once a regime which shall be sufficiently clear and comprehensive, even though we make a most modest beginning. It is quite needless to have recourse to a protocol. States do not require the machinery of the League of Nations or of a protocol of this nature in order to open a waterway to any particular country. It would be better to confine ourselves to a group of obligations which States could undertake *en bloc* whenever they might think desirable; the obligations would then automatically extend to include all those undertaking similar engagements. The question now arises as to what these obligations are to be.

There appears to be complete agreement as regards Article 2. Mention of Article 3 cannot possibly be omitted, because very little freedom, properly so-called, would be

left. Perhaps it could be altered, as the Italian Delegation proposes; it would no longer be national treatment that would be granted, but most-favoured-nation treatment.

M. BIGNAMI (Italy; speaking in French). — That is true. General Mance made a very just remark regarding charges. If a State expends considerable sums in order to have river navigation, and if it wishes to place very light charges on its inhabitants, who have already contributed to the expenditure, is it fair to compel it to extend to foreigners who come and work on its territory the more favourable terms which it grants to its own nationals? I consider that it should be free to accord different treatment—even though it might not actually do so—to the two categories of persons using its navigable waterways.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — In order to satisfy the Italian Delegation, we might add a supplementary paragraph, to be drawn up by mutual agreement, dealing with charges intended to cover the cost—including repayment of capital expenditure—of the waterways constructed and maintained at the public expense.

M. BIGNAMI (Italy; speaking in French). — There may be still other cases. Is it likely that a State will deprive itself of the right to accord to nationals somewhat different treatment to foreigners on certain canals constructed exclusively for certain industries or certain waterway-systems? Italy, who gives freedom to all, will probably give freedom even to those who come and work on her territory; but it does not seem to me reasonable for her to deprive herself completely of her rights by means of a convention of a general nature. As at the beginning of our work, we must be content with little in order to achieve greater results. I propose either to alter the text of Article 3 or else to omit all mention of this article. It should be understood that by freedom is meant freedom not only to treat other Powers differently amongst themselves, but to differentiate between foreigners and those who are living on their national soil.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — Not to mention Article 3 at all would be to go beyond M. Bignami's wishes. It would be better, by means of a text to be drafted by M. Bignami himself, to limit the scope of Article 3 as regards national waterways, excluding, for example, equality in matters of charges.

M. BIGNAMI (Italy; speaking in French). — A text of a general nature would be necessary. We might say that, as regards dues, Article 3 should not be interpreted as imposing absolute equality, but that these charges should be equitable.

The CHAIRMAN (speaking in French). — M. Bignami and M. Haas will draft a text which will satisfy the Italian and certain other Delegations, and will submit this text to the Committee.

Sir Louis KERSHAW (India). — I wish to ask one question. If a State signs this engagement, does that imply that all rivers within its territory will come under the terms of this regime without any possible reservation on the part of the State?

M. DETOEUF (France; speaking in French). — If reciprocity is admitted in the Protocol, the agreement must hold good for all the rivers in the country; otherwise it would not be known how far the reciprocity extended.

M. REINHARDT (Austria; speaking in French). — Is it possible to sign this Protocol with a reservation as regards the signature of certain States or groups of States? When signed by certain other States, the protocol may possess an interest for a country which it would not possess at all if not signed by them.

The CHAIRMAN (speaking in French). — That contingency has not been provided for. The question was raised at Geneva at the time of the discussion on the Permanent Court of Justice. Certain countries wished to make it a condition of their signature that a large number of countries should sign.

M. REINHARDT (Austria; speaking in French). — In that case the question is still more important.

M. Robert HAAS (Secretary General of the Conference; speaking in French). — That would completely change the character of this Protocol, which is of no value unless it is subject to reciprocity. I cannot see what a State risks by signing it without knowing which States will accede to it. If a State does not wish to bind itself unless other States with which it is particularly concerned will also be bound, I should like to point out that if these States do not bind themselves, neither will the first State be bound to them.

M. REINHARDT (Austria; speaking in French). — I presume that reciprocity will not always be put into practice. It may be theoretical, but may not actually be put into force.

M. Robert HAAS (Secretary General; speaking in French). — There are cases in which a country might strongly desire to consent to the sacrifice involved by opening its waterways to the flags of certain States, because it desires to carry on navigation itself in some particular country. I think that that is the case to which M. Reinhardt is referring. Such a country would make a fool's bargain by signing, because the country in which it desires to navigate will not enter its waterways, and those in which it is not interested will.

M. REINHARDT (Austria; speaking in French). — That is very true.

M. Robert HAAS (Secretary General of the Conference; speaking in French). — The question appears to me insoluble.

M. TSANG-OU (China; speaking in French). — I told you that it would be advantageous to have a more elastic system. You have introduced the word *reciprocity*. Think of a country as large as China, which has many navigable waterways. Is there any country which can guarantee reciprocity with China from the point of view of extent of navigation? I think the Protocol might be divided into three paragraphs, as follows :—

1. Recognition of the principle of freedom of communications;
2. Extension of this principle to national waterways, with a minimum of obligations;
3. Enumeration of obligations, which might be considered as optional in so far as they were reconcilable with the laws of the country.

I think a very simple system is required in order to permit the greatest possible number of countries to sign. If China accepts the first part, she will sign. If she accepts the second or third, she will sign.

M. KRBEK (Czecho-Slovakia; speaking in French). — This discussion on national waterways appears to me out of place. We are discussing national waterways, whereas we do not yet know what will be the regime of international waterways; and yet this is the real question which we have met to settle. We are constantly being told that we have not much time left, and that we must conclude our labours with all speed, and yet we are discussing questions of secondary importance, and so far have failed even to define international waterways. The formula proposed by M. Haas refers to articles with which we are not even acquainted. The extent of the engagements which we are undertaking in signing this Protocol cannot possibly be judged unless we have before us the text of these articles. I therefore propose that this discussion be deferred until after the Convention on International Navigable Waterways has been adopted.

As regards the substance of the question, the most important matter is to know what will be the engagements which we shall undertake by signing such a protocol. I think that the system of enumerating the articles is not a good one. The Italian Delegation has already proposed to omit four or five articles; various delegations will probably call for the omission of others. I am very much afraid that nothing will be left. I think it would be better to rest content with a more general, more elastic formula, as the Swiss Delegation has proposed, or else to take the text of the Preamble in the *Green Book*. A general formula would certainly find wider support.

The CHAIRMAN (speaking in French). — But you do think that a protocol is necessary for national rivers.

M. KRBEČ (Czecho-Slovakia; speaking in French). — In principle, yes.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Is it really of any use to raise this question of the Protocol? There are other reasons besides those given by the Czecho-Slovak Delegation—in particular a question of principle. Many delegations do not wish to accept anything which affects their national waterways, and this not through lack of any liberal spirit, but because the economic conditions of their country do not allow them to do so. A two-thirds majority is necessary for the Protocol to be accepted, and if all those who are not concerned in this question abstain when the vote is taken, or retire from the Committee in order not to undertake even a moral obligation in the matter, you can imagine the situation which will result. In my opinion, the question of principle must be raised first. Is it of any use,—is it not premature, to discuss a protocol of this kind?

The CHAIRMAN (speaking in French). — I wished to know the general opinion of the meeting before entering upon any detailed discussion, and for that reason I asked various speakers to give their views; I thank M. Avramovitch for having made the situation clear.

M. MONTARROYOS (Brazil; speaking in French). — I think M. Avramovitch does not know the origin of this Protocol; what he asks for has already been done, if not in Committee, then in Sub-Committee. The Sub-Committee had decided, on a proposal of the Japanese Delegation, to open to navigation all tributaries of all countries. After having adopted this proposal, which was of a much more radical nature than the Protocol, the Sub-Committee succeeded after much effort in inducing the Japanese Delegation to renounce the right, which it had acquired through this vote, and accept instead the idea of a protocol, even though more limited in its effect.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If I remember aright, it was a recommendation which was in question.

M. MONTARROYOS (Brazil; speaking in French). — No; there was a recommendation in the Preamble of the *Green Book* Draft. The Japanese Delegation had obtained a majority for its amendment, which goes directly counter to your wishes. We succeeded in establishing a protocol of such a character that those States which were unwilling to grant freedom of navigation on their own rivers were free not to sign it. We thus avoid causing a cleavage in the Conference. I think it is reasonable to accept this Protocol, especially as we have all agreed in principle that the ideal would be to open to every State what is really the sequel to the freedom of the seas, namely, freedom on the rivers of every country. By adopting this Protocol we shall clearly mark the goal towards which we all wish to turn our steps, and at the same time we shall in no way affect the special economic circumstances which for the moment prevent certain States from definitely accepting the principle of freedom.

M. Robert HAAS (Secretary General of the Conference; speaking in French). — I think it would be very desirable, in order to avoid any misunderstanding, to take a vote now on the principle of the protocol, it being understood that a vote in favour

will signify nothing more than an acceptance of the views expressed by M. Montarroyos, that is to say, that the system of the Protocol will leave to all who wish to accept it the option of doing so or of abstaining.

The CHAIRMAN (speaking in French). — As nobody else wishes to speak, I will consider the discussion closed, and will put to the vote the principle of the Protocol concerning national waterways.

The principle was adopted by 24 votes to 2, with 5 abstentions.

We now pass to the contents of the protocol.

M. POLITIS (Greece; speaking in French). — The question of principle has been settled, and I now propose that a small sub-committee be appointed to draft the protocol. It will then be submitted to the Conference in order that all may sign.

The CHAIRMAN (speaking in French). — As no-one asks to speak, the question will be decided thus. The Officers of the Conference propose that the following be appointed as Members of the Sub-Committee :

MM. Tsang-Ou (China), Velasquez (Paraguay), Lely (Netherlands), Bignami (Italy), Sir Louis Kershaw (India). If the Committee approves this choice, I will ask these delegates on its behalf to make great efforts to enable us speedily to arrive at a final text.

DISCUSSION OF ARTICLE 1

The CHAIRMAN (speaking in French). — We have now arrived at the culminating point of our labours. Article 1 raises a capital question; I will read it in the form in which it has been drafted by the Sub-Committee under the chairmanship of M. Alvarez :

In applying the present Convention, the following are declared to be navigable waterways of international concern :—

I. All parts which are naturally navigable, both to and from the sea, of a waterway, in its course, naturally navigable both to and from the sea, divides or crosses different States, and also all parts of any other waterway naturally navigable both to and from the sea, which connects with the sea a waterway naturally navigable which divides or crosses different States.

It is understood that :

(a) The fact of transhipment from one vessel to another is not excluded by the words *navigable both to and from the sea* ;

(b) Any natural waterway, or part of a natural waterway, is said to be naturally navigable if it is at present used for ordinary commercial navigation, or is capable, by reason of its natural conditions, of being so used;

(c) By *ordinary commercial navigation* is to be understood navigation which, in view of the economic conditions of the riparian countries, is commercially and normally practicable;

(d) Tributaries are to be considered as separate waterways;

(e) Lateral canals, constructed in order to remedy the defects of a waterway included in the above definition, are assimilated thereto.

II. Waterways, or parts of waterways, whether natural or artificial, expressly declared as being placed under the regime of this Convention, either in unilateral acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements with the consent, is particular, of the said States.

M. MIRZA HUSSEIN KHAN ALAI (Persia; speaking in French). — At the meeting of the Sub-Committee yesterday I reserved the right to speak again in Committee on the claims of my country, which have not yet been taken into account.

I have already had the honour to state the point of view of my Government as regards free navigation on the rivers of Mesopotamia. I need not dwell further on this subject. The Japanese amendment, which I supported (1), has been discarded, and paragraph C of Article 1, as submitted on April 5th to the Sub-Committee by

(1) For text of Japanese amendment see p. 69, and remarks of Persian Delegate, p. 72.

the small Committee appointed to draft it, does not appear in the text proposed today. This paragraph, which satisfied Persia, read as follows :—

When two or more waterways unite in such a way as to form a third, without the possibility of ascertaining which of the two original waterways is the tributary, both shall be considered as a main waterway.

If it were possible to introduce into Article 1, in the form in which it is submitted to us, a provision laying down that an international river does not lose its character when it changes its name, I should be satisfied; all the characteristics—hydrographic, topographic, economic—show that the Tigris and the Shat-el-arab form one and the same waterway. Through the mere accident of geographical nomenclature the Shat-el-arab, of which Persia is a riparian State, changes its name after Kurna and becomes the Tigris. Other similar instances also exist,—the Niemen for example, which is also known as the Russström and the Memel, but it remains none the less a river of international concern.

In the present circumstances, however, I am obliged to reserve the right of my Government, which cannot sign the Convention on Waterways until it has received entire satisfaction, and I ask the Chairman to be so good as to have my statement inserted in the Report.

The CHAIRMAN (speaking in French). — The Officers of the Conference will do what is necessary as regards inserting it.

Mr. H. O. MANCE (Great Britain). — I have been in communication with the Delegate of Persia. I am very grateful to him for not raising what might have been a difficult question at the present time. I quite share his hope that a satisfactory solution will be arrived at which will meet his requirements and enable him to sign and ratify the Convention.

The CHAIRMAN (speaking in French). — Most of the delegates concerned in this question, either from the geographical or technical point of view, were on the Sub-Committee, and I hope that the Committee will be able to record the unanimous agreement of the Committee.

M. WINIARSKI (Poland; speaking in French). — I am very sorry to have to delay this agreement somewhat. During the discussion of this question in Sub-Committee, I stated that I could accept Article 1, but that I would like an explanation of Paragraph 2 of Article 1, which reads as follows :—

Waterways, or parts of waterways, whether natural or artificial, expressly declared as being placed under the regime of this Convention...

I should be very glad if the Committee would adopt my point of view and insert in the Report, or in the records, the following statement :—

The mere fact that a State, while awaiting the conclusion of a general convention on the international regime of waterways, has provisionally granted freedom of navigation on some of its national waterways, under the conditions laid down in Articles 332 to 337 of the Treaty of Versailles, cannot be considered as deciding as to the international character of these waterways.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — This question appears to me to go beyond the bounds of any possible discussion at the moment. Paragraph 2 of Article 1 lays down that :—

Waterways, or parts of waterways, whether natural or artificial, expressly declared as being placed under the regime of this Convention, either in unilateral Acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements with the consent, in particular, of the said States.

It merely states—and this is fairly obvious—that waterways which in accordance with certain Acts are in such a situation that they ought to become subject to this Convention, shall in fact become subject to it. This is beyond dispute, and it would

even be unnecessary to say so as regards those States which may be signatories of such Acts. It must be stated here, however, because other parties besides the signatories of these Acts contract, in virtue of the Convention, certain obligations connected with navigation on these waterways, such as the obligation to defer to the jurisdiction of the League of Nations should any disputes arise in connection with such navigation. It was for this purpose only that paragraph 2 was inserted.

The question of the interpretation of these Acts should they be considered open to different interpretations by the parties interested, cannot concern this Conference, and is not touched upon in the text of Article 1. Moreover it appears to me that the Barcelona Conference is not competent to interpret individual treaties. I think that the question raised by the Polish Delegation cannot validly be solved here. Any decision which may be taken on this point would be absolutely invalid because the Conference is in no way qualified to give interpretations of treaties which have not been submitted to it.

The CHAIRMAN (speaking in French). — I think that is the general feeling of the Committee. The interpretation of the Treaty of Versailles, or similar treaties, does not come within our legal competence.

M. WINIARSKI (Poland; speaking in French). — My sole object in asking the Committee to insert this statement and approve it is that Poland, like Roumania, has had to accept provisionally, for a certain period, some obligations regulating navigation on purely national waterways pending the conclusion of a general Convention.

Our Committee has adopted two principles. I am in complete agreement as regards the principle of definition, in accordance with which national rivers remain as they are at present. But there is also the principle of enumeration. Although this mentions no names, it is none the less an enumeration. Then again, does not paragraph 2 of Article 1 constitute a substitution of obligations which might have the effect of rendering permanent what has hitherto been considered as purely temporary. I should not like the situation of Poland, any more than that of Roumania, to be rendered more difficult than it has hitherto been, as a result of Paragraph 2 of Article 1 of this Convention.

M. Robert HAAS (Secretary-General; speaking in French). — I should like to reply with as much precision possible to M. Winiarski's very interesting and clear remarks. My view is that no new obligation can arise in virtue of this Convention, if such an obligation has not been laid down in the Treaty. There will only be a substitution of obligations if such substitution is laid down in the Treaty. I repeat that this is merely a question of the interpretation of treaties, and this is outside the competence of this Conference.

M. ALVAREZ (Chile, President of the Sub-Committee; speaking in French). — If I have rightly understood the idea of the Polish Delegate, what he asks is that his statement should be entered in the records. I, for my part, see no objection to this; it would not prejudice anything within the competence of the Committee.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — In order to make the discussion fully clear I should like to ask the Polish Delegate the following question :—In the treaties to which he refers, are the rivers in question expressly stated as being necessarily subjected to the regime of the present Convention?

M. WINIARSKI (Poland; speaking in French). — I will read Article 18 of the Treaty concluded between Poland and the Principal Allied and Associated Powers :

Pending the conclusion of a general Convention on the International Regime of Waterways, Poland undertakes to apply to the river system of the Vistula (including the Bug and the Narev) the régime applicable to International Waterways set out in Articles 332 to 337 of the Treaty of Peace with Germany.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — That is not the question.

M. DETOEUF (France; speaking in French). — I think that that is solely a question of interpretation.

M. WINIARSKI (Poland; speaking in French). — I think there is a misunderstanding. We must know quite authentically and definitely whether, in virtue of this paragraph 2 of Article 1, the present situation of Poland will not be changed. This is the only condition on which I can accept Article 1.

The CHAIRMAN (speaking in French). — Everything depends on the interpretation of the Treaty signed between the five Principal Powers and Poland. In my opinion the Barcelona Conference is not qualified to settle this question.

M. WINIARSKI (Poland; speaking in French). — I do not ask it to do so, Mr. Chairman. What I ask is that my statement shall be entered in the records.

The CHAIRMAN (speaking in French). — This shall be done. The incident is satisfactorily closed.

M. VALLOTTON (Switzerland; speaking in French). — I must confess to the Conference that, with profound regret, I was obliged to inform my colleagues on the Subcommittee, that in spite of all the cordiality of our relations and all the consideration which they have shown me, I could not accede to the text which they have put before you. It was therefore agreed between us, in order to avoid prolonging this discussion, that I should have the honour of stating here in Committee the grounds for my proposal and my vote.

I should like to tell the Committee that it is a feeling of profound disappointment which impels me to put before you the statements which I wish to make. You will remember the salient facts which characterise a certain evolution of ideas in the question now before us, particularly as regards the right of enclaved States to access from the sea.

The popularity of President Wilson is perhaps already ancient history, and has been emphatically denied in certain respects. You will doubtless remember the emotion with which the whole civilised world received the statements of President Wilson, and particularly the solemn affirmation of this principle that every State should have the right of access to the sea, if possible under conditions of equality with other States. When I surveyed the work done first at Paris and afterwards here, I asked myself if we had really made any progress in this respect, and I must frankly confess that, as regards this Convention on Navigable Waterways, Switzerland will not vote on Articles 1 to 9 without some uneasiness.

We wish to have done with this question. I am here only the representative of a small country, and I have no illusions as to the success of my proposals. They have hitherto found but little response amongst you, but nevertheless it is my duty to point out that we cannot accept the point of view taken up by the Committee. On that point I am entirely in agreement with the Delegate of Poland. A treaty of peace, several treaties of peace, have been concluded, in which rights and obligations of very considerable importance,—particularly as regards the regime of international waterways—have been solemnly affirmed not only in favour of the signatories but also in favour of the beneficiaries. The idea which Switzerland has constantly sought to defend here—and if this idea had been a good one, it cannot have been well defended, because I have not succeeded in securing its acceptance—was that it was absolutely necessary to remain faithful to the principle that these treaties, good or bad, must be respected unless unanimous consent could be obtained to alter them. But I regret to repeat that—in the opinion of Switzerland—this principle has been forgotten, not merely as regards Article 1 but as regards Article 9, which is intimately connected with Article 1. I will explain my meaning. Contrary to the principle according to which the individual obligations of States as regards com-

munications should be extended both with a view to the maintenance of peace and also in order to develop these international communications, the definition of international navigable waterways, although we fully recognise that it marks some progress by including international tributaries, nevertheless, as regards those international waterways with which my country is concerned, it represents a retrogression, in respect of the rights recognised and even confirmed in favour of Switzerland. Switzerland claims these rights today because she considers that no-one can take them from her. She possessed them before the Treaty of Peace, and the signatories of the Treaty of Peace decided solemnly to confirm them. In particular as regards the Rhine in those articles which deal with the obligations of the riparian States, and which define in the first place obligations regarding upkeep, there was a definition on the subject of navigability which has not been sufficiently taken into account now. I will take Articles 336 and 337 of the Treaty of Versailles, and I ask permission to quote them because they are necessary for my argument, while at the same time I admit that they do not directly apply to Switzerland. There is also Article 297 of the Treaty of St. Germain, and Articles 354 and 358 of the Treaty of Versailles which are specially applicable to the Rhine, of which my country is a riparian State. In these texts the old principle is adhered to which I have had the honour to defend here,—a principle still to be found in a convention which is at present in force and which in certain respects, and particularly as regards navigability, has proved its worth; I refer to the Convention of Mannheim of 1868. In all these articles you will find the principle which I wish to state now, and which is mentioned, amongst others, in Article 336, which concerns Switzerland. This Article reads as follows :

In default of any special organisation for carrying out the works connected with the upkeep and improvement of the international portion of a navigable system, each riparian State shall be bound to take suitable measures to remove any obstacle or danger to navigation, and to ensure the maintenance conditions of navigation.

As regards ascertaining what is understood by navigability, the authors of this article considered that the decision should be left to the riparian States and to those non-riparian States which are indirectly interested in the rivers. That precaution appeared to me a wise one, and without any intention of criticising the Sub-Committee, I may say that it would perhaps have been better to follow the example given it by those practical men who considered it preferable not to enter into too many details in a general convention and to leave to the parties interested in each individual river the task of considering the meaning of navigability, in accordance with the special conditions of each river.

The Sub-Committee proposes to introduce a new definition of navigability. By navigability it means in the first place the navigability of a natural waterway or part of a natural waterway which is at present used for ordinary commercial navigation. In this respect I will recall the fact that one of the members of the Sub-Committee—the British Delegate—himself recognised on one occasion that this conception of ordinary commercial navigation was open to dispute. To this definition has been added the following :

By ordinary commercial navigation is to be understood navigation which, in view of the economic conditions of the riparian countries, is commercially and normally practicable.

Switzerland considers that by making this addition to the Treaty of Peace, which will control my country as regards the Rhine, of which it is one of the interested parties, rights have been prejudiced which, as the Delegate of Poland has pointed out, cannot be taken from us either by this Conference or inferentially by a mere definition connected with Article 1.

I repeat that I should be only too desirous of finding some common ground for compromise, and if a text could be found containing a formula which would free Switzerland from the fears which this definition inspires in her, she would be happy to support or vote on Article 1. For this reason, the principle which she proposes to follow is in conformity with the principle which was defended by the Allies during the war, and which prompted the French Government to invite us at Paris to begin our labours,—the principle that particular consideration must be given to the special

situation of enclaved countries. For this reason I have the honour to propose to the Committee the addition to Section *c* of Article 1 the following words :

The fact that a waterway can give access to the sea to an enclaved State shall suffice to establish the fact that such waterway can be used for purposes of ordinary commercial navigation.

Failing this, I propose that we should remain faithful to the principles of the Treaty of Peace, that is to say, that we should leave the parties concerned in each individual waterway to interpret navigability, and therefore that paragraphs *b* and *c* should be omitted. I hope that this appeal from a small country will not fail to meet with response and that we, who were one of the protagonists of the League of Nations, who earnestly supported the initiation of this Conference, and who have wholeheartedly shared in its labours, shall not be driven by you to the regrettable necessity of voting against a principle which has always been specially dear to us.

M. CARACOSTEA (Roumania; speaking in French). — I wish to say that Roumania fully supports the amendment proposed by the Delegate of Poland, and I should like this to be mentioned in the records.

The CHAIRMAN (speaking in French). — The necessary steps shall be taken to do so.

Mr. H. O. MANCE (Great Britain). — I speak as one of those who are probably less interested in the discussions which have taken place on the subject of Article 1. I think that the Committee should know that the Sub-Committee devoted, I think I am correct in saying, three meetings, occupying probably at least ten hours, in the attempt to satisfy the Delegate of Switzerland. Very considerable concessions were made in order to arrive at that solution, and, as one who participated in all these discussions, I have no hesitation in saying that it is perfectly useless to re-open the discussion at this stage. The Delegate of Switzerland has every right to make a declaration; he doubtless wishes it to be inserted in the records. I really hope that the Committee will not wish to discuss this point any more, but will accept the text as a compromise arrived at after very careful and sympathetic study. It embodies very considerable concessions made by other interested parties.

The CHAIRMAN (speaking in French). — I should like to add to what the Delegate of Great Britain has said, that I kept in touch with the discussions of the Sub-Committee, and that it made very great efforts to arrive at an agreement with the Swiss Delegation. I am also fully aware that the Sub-Committee went to the extreme limit of the concessions which could be made. I shall ask the Committee to proceed to vote without further discussion.

M. BIGNAMI (Italy; speaking in French). — I had hoped that the article would be submitted to the vote in its form as drafted. As General Mance says, it was the fruit of the labours of several days.

You all know the amendment proposed by the Italian Delegation. You know the spirit of conciliation which the Italian Delegation has manifested not only on this occasion but on many others. It cannot, however, accept any substantial alteration of this article. I have already said that Italy expends considerable sums on inland navigation. I have also said that she is prepared to give access to all comers on her waterways, and that she will allow passage on her territory to as much merchandise and to as many persons as possible, but she cannot accept a view which would mean stepping back more than a century. The definition which we gave in Article 1 is based on technical factors, and for this reason it is a very just one. Any alteration of this definition would give rise to unfairness, and that we cannot tolerate. If substantial alterations, such as those proposed by the Swiss Delegation, are introduced into Article 1, the Italian Delegation will not sign the Convention. Even if it did so, the country could not ratify it. I should also like to point out that the interests of enclaved countries have been respected; but I have always noticed that the Swiss Delegation has at all times been prepared to navigate all over the world, but that it

has not been equally prepared to expend money to enable it to navigate in the rivers to which it demands free access. I repeat that we are prepared to give freedom of navigation on our waterways to all, but we cannot tolerate anything recalling the Treaty of Vienna, which barbarously divided Italy into several parts; nor can we countenance an attempt to vindicate rights which no longer exist.

M. VALLOTTON (Switzerland; speaking in French). — There is some misunderstanding. It was not the relations between Switzerland and Italy which I had in mind, but the articles which applied to the regime of the Rhine. I regret that I did not succeed in making myself understood, but I said that we cannot be deprived here of the rights on the Rhine which were given to us by the Treaty of Versailles.

The CHAIRMAN (speaking in French). — The discussion is closed. I will put to the vote the amendment submitted by the Swiss Delegation. It reads as follows : Add to Article 1, paragraph c, the following words :

The fact that a waterway can give access to the sea to an enclaved State shall suffice to establish the fact that such waterway can be used for purposes of ordinary commercial navigation.

The result of the vote is as follows :

There are 9 votes for, 11 against and 11 abstentions.

The amendment was rejected.

If no-one else wishes to speak on Article 1, I declare this article adopted.

APPOINTMENT OF ASSISTANT RAPPORTEUR

M. MONTARROYOS (Brazil; speaking in French). — I propose that the Committee appoint M. Detœuf as Assistant-Rapporteur. He has worked with us a great deal in Sub-Committee, and his co-operation will be most useful.

The CHAIRMAN (speaking in French). — The Committee has shown by its applause that it accepts the proposal of M. Montarroyos. M. Detœuf is appointed assistant-rapporteur.

The meeting adjourned at 5.50 p.m.

THIRTEENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Saturday, April 16th, at 11 a.m.).

DISCUSSION OF ARTICLE 1a) — DISCUSSION OF ARTICLE 4

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 1 a)

The CHAIRMAN (speaking in French). — We will proceed to Article 1 a), the text of which, as proposed by the Sub-Committee, reads as follows :—

ARTICLE 1a).

Amongst navigable waterways of international concern, the following shall form a special category with a view to the application of Articles 4 and 9 of the present Convention :

(a) Navigable waterways for which there are International Commissions upon which non-riparian States are represented.

(b) Navigable waterways which may subsequently be placed in this category, in virtue either of unilateral declarations on the part of States under whose sovereignty or authority they are placed, or of agreements made with the consent in particular, of such States.

M. SIDZIKAUSKAS (Lithuania; speaking in French). — Lithuania accepts the general principles of the Convention on Navigable Waterways. Nevertheless, Article 1 a) of the Draft, as proposed by the Sub-Committee, may give rise to some difficulties as regards the application of the Convention on certain waterways, and with a view to avoiding all misunderstanding on this subject, I have the honour, in accordance with formal instructions from my Government, to make the following statement :

According to Article 1a) of the Draft Convention submitted by the Sub-Committee, navigable waterways in respect of which there exists an international commission on which non-riparian States are represented form a special category of navigable waterways of international concern as regards the application of Article 4 and Article 9 of the present Convention.

The river with which Lithuania is chiefly concerned is the Niemen. In Article 331 of the Treaty of Peace of Versailles this river is declared to be international from Grodno; but it is only fair to point out that the Niemen, in the whole of its navigable part—that is to say from Grodno to the sea—crosses Lithuanian territory, where it is considered as a national river, and that it only forms a frontier between two States in its lower reaches over a distance of 112 kilometres.

On the occasion of a speech by one of the Swiss Delegates (1), the Conference laid down, in Article 2 of the Convention on Freedom of Transit, that the Treaty of Versailles is only binding upon signatory or beneficiary States. As Lithuania was not a signatory of the Treaty of Versailles, and did not give her assent to the internationalisation of the river Niemen, she cannot consider herself bound by any but the provisions of the present Convention, in which she has been invited to take part. Moreover, the international Commission for the Niemen has not been formed.

The Lithuanian Government therefore considers that it is in perfect conformity with the provisions of the present Convention if, when carrying out this Convention, it considers

(1) See *Verbatim Records and Texts relating to Convention on Freedom of Transit*, p. 238.

the Niemen as belonging to the category of waterways referred to in Article 1 and not in Article 1*a*) of the Convention.

I do not wish to give rise to any discussion on this subject, but I venture respectfully to beg the Rapporteur to mention my statement in his Report.

M. WINIARSKI (Poland; speaking in French). — I heartily support the declaration of my Lithuanian colleague, although in a friendly spirit I have to make a slight reservation with regard to the question of boundaries. This matter is not yet settled, but I have no doubt an amicable settlement will be arrived at to the complete satisfaction of both parties. Apart from this reservation, Poland does not intend to ask for any International Commission to be formed for the Niemen. She hopes to settle the question by agreement with her Lithuanian and German neighbours. From the legal point of view I entirely support the conclusions of my Lithuanian colleague.

The CHAIRMAN (speaking in French). — I feel sure that this momentary difference will shortly be settled amicably. Does the Sub-Committee agree that the Lithuanian declaration, which has the support of the Polish Delegation, shall be inserted in M. Montarroyos' Report?

Mr. H. O. MANCE (Great Britain). — I think it is quite a legitimate statement, but in order to avoid making the Report practically a record of the meetings. I hope the Lithuanian Delegate will agree that it shall be inserted only in the Records.

M. SIDZIKAUSKAS (Lithuania; speaking in French). — I should prefer it to be briefly mentioned in the Report.

M. DETOEUF (France, Assistant Rapporteur; speaking in French). — There is no objection to mention being made in the Report that a statement has been made by the Lithuanian Government.

The CHAIRMAN (speaking in French). — The statement will therefore be mentioned in the Report, but the text will be inserted in the Records only.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It seems to me that Article 1*a*) is superfluous, and it would be better for it not to appear in the Convention, at least in its present form, for the following reasons :—

According to Article 338 of the Treaty of Versailles and the corresponding articles in other Treaties, a general Convention on Waterways must be drawn up establishing general conditions to govern all rivers mentioned in Articles 332 to 337 inclusive. The Delegates of Latin America in particular have always been of opinion—and rightly so—that, in a general convention, questions depending on certain treaties of peace must as far as possible not be touched upon. I consider that the general definition of Article 1 is quite satisfactory.

I therefore propose to change Article 1*a*)—to omit the first part, which refers to rivers for which there are International Commissions, this being already provided for under Article 1. On the other hand, if several delegations consider that paragraph *b*) satisfies them, I think that we might retain it, but that we should add it to Article 1. My proposal consists therefore in adding to Article 1 a paragraph in the following terms :—

Under the term navigable waterways of international concern shall also be included navigable waterways which would hereafter be classed in this category, either in virtue of unilateral declarations on the part of States under whose sovereignty or authority they are placed, or in virtue of agreements made with the consent, in particular, of such States.

If we think that exceptions must be made as regards Articles 4 and 9, we could say so in these articles, instead of drawing up an article providing for a special category for their application.

M. ALVAREZ (Chile, President of the Sub-Committee; speaking in French). — I regret that I cannot agree with the Serbian Delegate. The Sub-Committee considered that this provision of Article 1 *a*) was indispensable. It is, indeed, necessary to provide this double category, at least on rivers; it will thus facilitate the task of regulation. This article was, moreover, the outcome of a long discussion and a compromise. I think that if it is abolished or placed elsewhere, the mechanism and structure of the other articles will have to be considerably changed. I therefore beg you, on behalf of the Sub-Committee, to maintain the text as adopted.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think I stated with sufficient clearness that a general convention must not do more than establish a general system of regulation; it must not perpetuate what has been done by treaties, but must spring from existing needs. It will be the duty of each International Commission to fix the conditions suited to the particular river which it controls. If you mention Articles 4 and 9, why not mention Articles 11 and 19, which also refer to International Commissions? And if you do this, you will no longer have a general convention drawn up under the auspices of the League of Nations. I once more appeal to your concern for the interests of the world at large not to allow a convention to be made which will deal only with the duties and rights of certain States interested in certain treaties. We must have a general convention, based upon Article 338, which, let me remind you, lays down that

the regime set out in Article 332 to 337 above shall be superseded by one to be laid down in a General Convention drawn up by the Allied and Associated Powers, and approved by the League of Nations, relating to the waterways recognised in such Convention as having an international character.

In Article 1 you define this international character. In Article 1 *a*) the question is not touched upon; you merely say that the waterways which have an international commission are dealt with in a certain manner, and you except these rivers from the application of certain articles. I think that is neither just nor logical. It is true that Article 1 *a*) is the outcome of long discussion, but this was in Sub-Committee. I now put the question to the Committee, and I ask it to abolish this article, because I consider that it does not fulfil the spirit in which this Convention should be made. If we find it necessary to provide for special exceptions to Articles 4 and 9, we can say so in those articles. Let us therefore, with the permission of the Chairman of the Sub-Committee, discuss Articles 4 and 9 first of all, and propose certain small changes in them.

M. ALVAREZ (Chile, Chairman of the Sub-Committee; speaking in French). — All these observations have already been considered. I realise that they have not received full satisfaction, but in order to arrive at a definite result a compromise must be made, and it is for the Committee to decide whether it wishes to re-open the discussion.

M. DETOEUF (France, Assistant-Rapporteur; speaking in French). — I simply wish to say one word regarding Article 1*a*). The words to which M. Avramovitch objects could be omitted.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The world must not be divided into special categories, one strictly regulated by a certain article, another less strictly regulated by another article. In my opinion Article 1*a*) ought not to exist, and I propose that it be deleted, with the exception of paragraph *b*; this could be transferred to Article 1, which we have already adopted. My proposal is then to delete the beginning of Article 1 *a*) and to transfer the second part to Article 1.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — With M. Detœuf's concession, M. Avramovitch's proposal becomes of very great importance. We drew up Article 1*a*) because it was necessary on account of Articles 4 and 9. If

M. DETOEF omits any mention of Articles 4 and 9, what M. Avramovitch has said seems quite right. In order to avoid a decision which at the present moment would perhaps be premature, it would be better to discuss Articles 4 and 9, first of all, and to see whether Article 1a) is necessary or not. Then we might consider M. Avramovitch's proposal regarding paragraph *b* of Article 1a).

M. VALLOTTON (Switzerland; speaking in French). — We do not fully understand the aim and effect of this proposal. The term *special category* itself, used in Article 1a), seems to me somewhat vague; I do not know whether the Serbian Delegation desires a greater or a lesser obligation.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I think my meaning is quite clear. Article 1 states a general principle, and I do not know why a special category has been introduced in Article 1a) in respect of the application of certain articles. What do the words *special category* mean? At one time the world was divided into classes; certain categories were despised and others respected. Our wish is that all should be equal, and for this reason I referred to Article 338 and asked that no mention should be made of special categories. I think that Article 1 covers all possible cases, but if certain delegations still require paragraph *b* of Article 1a), we could add it to Article 1.

M. ALVAREZ (Chile, Chairman of the Sub-Committee; speaking in French). — The division into categories does exist in actual fact; there are rivers administered by International Commissions, and other rivers administered only by the riparian States. The former rivers form the first category; they exist only in Europe. The others form the second category; they may be found in America and in Europe as well.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — When this first category is referred to, why should special mention be made of Articles 4 and 9?

Mr. H. O. MANCE (Great Britain). — I appeal to the Committee to consider the question from a more general point of view. After long discussion, and animated with a sincere desire to reach an understanding, we arrived at a compromise. You will remember that there was one large group of delegations which desired to divide navigable waterways into two categories, whilst another group, to which I belonged, supported the idea of a general definition, and was opposed to this division. Both groups made numerous concessions, and I therefore beg the Committee to accept this text as a compromise. I am fully aware that a compromise cannot satisfy everybody, but I beg the Committee to accept this text in its present form.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I strongly urge my proposal; it would be unwise to vote on this article at the present juncture. If we rejected M. Avramovitch's proposal, it would seem as if we were unwilling to examine it in the light of day. M. Detœuf has made a concession which adds special importance to this proposal. The method of solving the question consists therefore in discussing Articles 4 and 9 first of all, and then, and not until then, Article 1a).

DISCUSSION OF ARTICLE 4

The CHAIRMAN (speaking in French). — I entirely agree with the Rapporteur. Let us suspend for a moment our examination of Article 1a) and consider Article 4, which reads as follows :—

As an exception to the two preceding articles, and in the absence of any Convention or obligation to the contrary :—

1. A riparian State situated on a natural system of navigable waterways of international concern, is entitled to reserve for its own flag the transport of passengers and goods between

two ports placed under its sovereignty or authority. A State which does not make use of these powers may refuse the benefit of equality of treatment as regards such transport to any co-riparian State which does make use of it.

If both ports are situated on waterways of the kind referred to in Article 1a), these powers are limited to the establishment of regular passenger and goods services—which are either national or nationalised—as long as the Navigation Act does not proclaim complete freedom on these waterways.

2. When a natural system of navigable waterways of international concern, which does not include waterways of the kind referred to in Article 1a), only separates or passes through two States, and provided that these two States are in agreement, they are entitled to reserve for their own flags the transport of passengers and goods between two ports situated on the said system, unless this transport takes place between two ports not situated under the sovereignty or authority of one and the same State, in the course of a voyage which is effected without transshipment, and which includes a sea-passage or a passage over a navigable waterway of international concern, not belonging to the above-mentioned system.

M. ALVAREZ (Chile, Chairman of the Sub-Committee; speaking in French). — The text of this article has been drafted by a small Committee appointed by the Sub-Committee.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Who were the members of this Committee?

M. ALVAREZ (Chile, Chairman of the Sub-Committee; speaking in French). — The Delegates of Poland, France, Great Britain and Roumania, and the Rapporteur.

M. BIGNAMI (Italy; speaking in French). — I wish to ask the Rapporteur why—contrary to what has always hitherto been the practice—the words *natural system of navigable waterways* are used. There must be a reason for this.

M. DETOEUF (France, Assistant-Rapporteur; speaking in French). — I merely wish to inform M. Bignami that the words *natural system of navigable waterways* were used to show that they referred to a river and its tributaries and not to a system of waterways consisting of, let us say, river basins connected with each other by canal. If this restriction were not made, no system of waterways could ever be delimited. The word *natural* here means simply *river* and *with its tributaries*, and the explanation of it is quite different from that of the word *natural* as used in Article 1. In any case a detailed explanation will appear in the Report.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Articles 4 and 16 have been combined in a single article which has become Article 4. Why was this done?

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — A careful study of the text will show the reason.

I should like to explain how this Article 4 was finally adopted in this form. You all remember that we have been discussing the question for the last fortnight, at first in Sub-Committee during the day, and then in the small committee at night from eleven o'clock until half-past two in the morning. Conflicting theories were advanced and there were no means of bringing the matter to an end. I proposed a compromise, and we thus adopted the text which we are submitting to you. But I think that in order that M. Avramovitch may fully understand the purport of this article, the Roumanian Delegate himself must be so good as to give him an explanation.

M. PERIETZEANO (Roumania; speaking in French). — Before proceeding to draft an article, I think that long reflection is necessary; if we attempt to work on ideas which are not clear, we shall obviously arrive at no result.

There were two principles concerned,—firstly, the fact that an international Commission for a river constitutes a drawback which prevents those rights from being enjoyed on that river which are recognised in the case of all other rivers. Secondly, as Article 16 of the Convention had not solved the problem of local transport traffic

on account of the difficulties which had been raised, many delegations said :—"Let us solve this problem as we have solved the others, and if in the end we do not succeed, let us leave it aside." So we began to discuss, and the result which we arrived at was that transport on inland waterways should be reserved for riparian States. This is the meaning of the first part of Article 4. We then return to the second category established in Article 1a), and we considered whether the principles recognised in the Convention as applicable to international rivers could not also be granted to rivers controlled by international Commissions.

I have said that it was inadmissible that a principle which held good for all international rivers and seaports, should cease to do so for three or four rivers, because these rivers have international Commissions. Does the fact of having an international Commission make the riparian States of such waterways to be minors? Are these people no longer to enjoy their rights? Are they outside the law? That is how I stated the problem. I said that I could not allow that view, even if my country were not interested from the economic point of view. In private law, for example, a minor provided with a legal adviser does not cease to enjoy all the rights laid down in the civil code. Instead of exercising these rights himself, his legal adviser exercises them for him. The law has only given him a legal adviser in order to protect him and in order to place him in such a position that he himself, as he is not responsible for his rights, cannot renounce them.

I said then that the task of an international Commission was to defend the rights of riparian States, and not to take them away. For my country this is a question of self-respect, of national sovereignty, and therefore, as I could not admit any other view I was inflexible. We passed several hours in discussion, which was, however, of a most friendly and courteous kind, and I may certainly say that my opponents, seeing me defend, as I did, the interests of my country, held me in the greater esteem.

However, patriot as I am, I cannot prevent forty States from concluding a convention, but I do not see in the fact that a river has an international Commission anything more than another wheel in the machinery, and it is understood that that fact does not deprive the co-riparians of these rivers of any of their rights. There were two cases to consider. Have the co-riparians of these rivers with international Commissions the right to reserve for their own flags local water transport between their ports? Then there are also goods which, having arrived by a foreign vessel and not having been nationalised, must undergo transshipment in a Roumanian port, for example, and continue their journey by another vessel to another Roumanian port before being introduced into the country and nationalised. That also is local water transport, and, from the economic point of view, I certainly desire that each riparian State should retain the power of reserving such traffic for itself. But now a totally different standpoint was adopted. The riparians were considered, so to speak, as people who had forfeited their rights and been placed under tutelage, so that attention was paid not so much to the rights of third parties in respect of them but rather to their rights in respect of third parties. It may be said in fact that it was no longer even guardianship but actual sequestration.

As I could not admit that the first category of this transport traffic was not reserved to riparian States, I wished to adopt a less unyielding attitude as regards the second. As the Delegate of the Serb-Croat-Slovene State was not there, I could not consult him, and I had to content myself with speaking on behalf of Roumania alone. I admitted that on rivers having an international Commission, the rights of riparian States to reserve certain classes of transport traffic for themselves could be slightly restricted, and I only yielded on this point in order to arrive at an understanding. But now I ask whether, on rivers without an international Commission, the water transport traffic reserved, under the first paragraph of section 1, for riparian States, includes the second case which I have cited,—that of the transport of non-nationalised goods. I think it does, because there is an exception laid down in the second paragraph stipulating that the riparian States of rivers with international Commissions enjoy inferior rights. As I have said, the fact of being a riparian State of one of these rivers appears to imply a kind of forfeiture, a stigma, an incapacity to enjoy full rights. You will understand the difficulty of this position when you think of the trials of a citizen who does not enjoy his full rights. Most probably if any of you were asked

to renounce a particle of your rights, however small, you would object with all your might because you would not like it to be said that your rights had been diminished, in however slight a degree.

In the first paragraph there is a textual error which I will point out at once. It reads :

A riparian State situated on a natural system of navigable waterways of international concern is entitled to reserve for its own flag the transport of passengers and goods...

I think that the words *is entitled* do not exactly express the idea, and that the words *has the right*, would be much clearer and more accurate.

As regards the second paragraph of section 1, instead of referring to Article 1 a), why should we not alter the wording as follows :—*If both ports are situated on waterways having an international Commission?* In this way the distinction would at once be clear, and it would not be necessary to refer to Article 1 a). I should like to add another criticism to this second paragraph of section 1. It reads : ... *these powers are limited to the establishment of... local... services...*

Power—or rights, if my comment is taken into account—are of a purely legal nature, whereas the establishment of a service is a fact. We cannot compare rights with facts, and I therefore propose to alter the sentence as follows :

If both ports are situated on waterways having an international Commission, these powers (or this right) are limited to the exclusive right of the national flag to establish local services...

I agreed, speaking for myself alone, that on waterways administered by an international Commission, the right of reservation should be limited to the local transport of national or nationalised goods, and to the granting of permission to carry out local transport in exceptional cases, to vessels coming from another State after a long voyage, if the voyage was not made regularly. I also made another concession in connection with the special measures taken by the international Commission of a river by the international Commission of the river.

I have one last remark to make on the second paragraph of section 1. This paragraph reads : *as long as the Navigation Act has not proclaimed complete freedom on these waterways...*

I propose to add here the words : ... *with the unanimous consent of the riparian States.*

This addition appears desirable to some of us and undesirable to others. In the articles of the treaties by which these international Commissions were established, it is enacted that decisions shall be taken by a majority vote, and these articles, which concern the establishment of these Commissions, cannot be changed by the Barcelona Conference. If we were to ask you to abolish the international Commissions, you would have the right to reply that you cannot. But what I am asking here is that it should be stated that the Navigation Act shall obtain the unanimous consent of the riparian States, because it is essential that every security should be given in this respect. Roumania accepts this section I with the slight changes which I have indicated, and I think I am not presuming when I say that the Polish Delegation shares my view.

I will once more read the second paragraph of section 1, in the form in which I submit it for your approval :

If both ports are situated on waterways having an international Commission, these powers are limited to the exclusive right of the national flag to establish services for passengers and goods which are either national or nationalised, as long as the Navigation Act does not proclaim complete freedom on these waterways, with the unanimous consent of the riparian States.

M. WINIARSKI (Poland; speaking in French). — Certain points in the wording did not appear to me very clear, but now the question seems clearer, and I have prepared in writing a proposal which subject to drafting amendments should not, in my opinion, meet with any fundamental objection.

Obviously a Navigation Act may establish complete freedom, that is to say it may prohibit the reservation of local transport. Suppose that a riparian State, Serbia

for example, cannot sign this Act. What then will be her position? The Navigation Act will come into force, and all the benefits derived from it will be secured by the signatory States. Will a single State, which wished to reserve local transport for itself, be put aside and, so to speak, boycotted? That would be a very heavy penalty.

Our aim is to give satisfaction to the legitimate desires of all States, to find a formula which would allow States the option of not accepting complete freedom to reserve local transport for themselves without being obliged to renounce all the benefits of the Navigation Act. States must be allowed to accede to the Navigation Act with the exception of one provision,—that which concerns local transport. From conversations which I have had with those of my colleagues who represent the opposite view, it does not seem to me that they object to this proposal in principle. The following then is the formula which, subject to drafting amendments, might replace the second paragraph of section 1 of the new text of Article 4 :

On the navigable waterways referred to in Article 1a), and except when complete freedom has already been proclaimed or may subsequently be proclaimed unanimously by the States represented on the international Commission, the Navigation Act shall leave the riparian States the right to reserve the local transport of passengers and goods which are either national or nationalised.

In order not to take up the attention of the Committee too long on this point, perhaps it would be well to reserve this article and to resume the discussion of it this afternoon when the Delegates have examined the text at leisure.

The CHAIRMAN (speaking in French). — I think it would be better to adjourn the meeting in order that we may examine the text proposed by M. Winiarski which, in his opinion, should be substituted for the second paragraph of section 1 of the new text proposed by the Sub-Committee for Article 4. You will also bear in mind the changes proposed by M. Perietzeano in the first paragraph of the same section.

(The meeting was adjourned at 12.30 p.m. and resumed at 12.45 p.m.)

The CHAIRMAN (speaking in French). — We will resume the discussion of the new text proposed for Article 4.

I am not competent to appreciate the relative values of texts; I am here simply to direct the discussion in the most practical manner possible. Will you allow me, however,—if I express my personal opinion—to say that I consider that the text submitted to you appears to me at first sight satisfactory.

Does anyone wish to speak?

M. PERIETZEANO (Roumania; speaking in French). — I wish to state that I second the proposal of M. Winiarski, which is better than mine and which is the result of mutual concessions.

The CHAIRMAN (speaking in French). — As Vice-President of the Conference summoned by the League of Nations, I am very grateful to you for the willingness with which you solved these difficult questions, and I should like to thank you.

Mr. H. O. MANCE (Great Britain; speaking in French). — I think that we may accept the proposal of M. Perietzeano, subject to the opinion of the jurists upon this last addition, in which mention is made of the unanimous consent of the riparian States. We must not forget that there are Treaties of Peace, and we know that certain States are obliged to accept certain decisions, for example the regime established by the Danube Conference. These provisions must not be prejudiced, and for this reason I think it would be advisable to take the opinion of the jurists.

I understand the object of M. Winiarski's proposal, and I am quite satisfied with it, but I think it is not absolutely necessary, and it might give rise to difficulties. It would be better therefore to accept the essential idea, that is to say that freedom can be established only by the unanimous opinion of the riparian States alone. There

is no need to go further, as suggested by the Polish Delegate, whose proposal would call for closer examination.

M. DETŒUF (France; speaking in French). — I also would prefer to accept the Polish amendment, with the same reservation as that made by the Delegate of Great Britain. The only difference between the two is that there are rivers on which freedom has already been proclaimed, and the Polish amendment does not go back upon that proclamation of the general freedom of navigation on these rivers. It is only in this one point of detail that I consider the Polish amendment superior, and I think there is no reason why we should appreciably differ from the British view.

M. PERIETZEANO (Roumania; speaking in French). — As a result of this statement I withdraw my amendment.

Mr. H. O. MANCE (Great Britain; speaking in French). — I cannot accept this amendment without having considered it with my delegation, and for that reason I propose that we should content ourselves with the Roumanian amendment, which we could accept at once.

The CHAIRMAN (speaking in French). — In view of this statement on the part of the British Delegation I think we might postpone the final settlement of this question until this afternoon and pass to section 2.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Before the matter is discussed allow me to make the following observations. On the principle that local transport traffic is a commercial question and that freedom of commerce is not freedom of navigation, we decided, for this reason alone, when we discussed the question at Paris, that local transport must be reserved for the riparian States. I now give my entire support to the arguments adduced by the Roumanian Delegate.

In order that we may support the Polish amendment, I propose to delete from the end of it the words *which are national or nationalised*, because, from another point of view, these provisions, in their present form, would deprive us of the right of allowing our vessels to share in the transport of non-nationalised goods, even in connection with local transport traffic only. If I am wrong, I should be very pleased to learn that this is not so; but in order to make sure, the best course would be to delete the words which are *national or nationalised* from the Polish amendment; I cannot see why they were introduced into the original draft of Article 4. We therefore second the Polish amendment on grounds of compromise, but subject to certain small improvements. As regards the rest, I think there will be no difficulties, because we do not touch upon legal questions.

M. DETŒUF (France, Assistant-Rapporteur; speaking in French). — I have not examined the Serbian proposal, but I should like to put forward the following text, which would meet both the views which have been expressed, and which would begin from the basis of the Roumanian amendment and would end on that of the Polish amendment.

If both ports are situated on the waterways of the kind referred to in Article 1 *a*), these powers are limited to the exclusive right of the national flag to carry on regular local services for passengers and goods which are national or nationalised, unless the Navigation Act has already proclaimed complete freedom or until it proclaims it, with the unanimous consent of the riparian States.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The Polish amendment is better; it does not speak of limiting, nor does it impose such a heavy moral obligation.

M. DETŒUF (France; speaking in French). — It is exactly the same thing.

M. WINIARSKI (Poland; speaking in French). — If in establishing the general Convention we establish a fundamental right, the Navigation Act cannot rob it of its effect.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is for that reason that we support the Polish amendment. There is no need for further discussion. Are we agreed? Do we wish to reach a definite result? We cannot allow special demands to arise at every moment.

M. MONTARROYOS (Rapporteur; speaking in French). — We had arrived at a point at which agreement appeared to be almost established, when M. Detœuf made a new proposal which certain delegates seemed unable to accept.

The situation is as follows : M. Avramovitch seconded the Polish amendment, as did M. Detœuf, subject to a legal interpretation of one particular point. What was that point?

M. DETŒUF (Assistant-Rapporteur; speaking in French). — The question is that of General Mance's remarks on the situation created by the Treaty of Peace.

M. MONTARROYOS (Brazil; speaking in French). — I do not quite understand the restriction which you have introduced into the Polish amendment.

M. PERIETZEANO (Roumania; speaking in French). — I do not think that in principle and in law there should be any difference between rivers with international Commissions and other rivers. We do not desire that the fact of having an international Commission should place a river in an inferior situation. In the discussion I conceded two points,—that this right of reservation should be applied only to national or nationalised goods and only on regular transport services. Serbia does not admit this concession. In strict justice there should be no difference, from the legal point of view, between rivers with an international Commission and others, but I yielded on this point in order to arrive at an agreement. M. Avramovitch for his part does not yield. He wishes for absolute equality. But there is one point on which there can be no difference of opinion, and that is, if the international Commission itself should unanimously decide to take action in the matter. We are therefore all in agreement with M. Avramovitch in admitting that if the international Commission had already decided, or if it were subsequently to decide, otherwise, its decisions should be respected on condition that they were taken unanimously. It is therefore recognised that the international Commission may take a decision contrary to the Convention, if its decision is a unanimous one. Another point on which we are all agreed is that local water transport is reserved for riparian States, if it is carried on by regular services and for national goods.

There is, however, one point which Serbia does not accept, and we must ascertain whether these delegates decide to make this last little concession. I, for my part, lay down the principle that no difference should be made between rivers as regards rights. I who have conceded this, appeal to the Delegate of France and to the Delegate of Great Britain to come to an agreement with us on the basis of the Polish amendment. Cut the pear in two if you like, for it will indeed be regrettable if we do not arrive at a decision on account of a mere question of detail.

M. MONTARROYOS (Brazil; speaking in French). — M. Avramovitch has confused two ideas in his mind. What would happen if you conveyed between two of your ports goods which were neither national or nationalised?

M. DETŒUF (Assistant-Rapporteur; speaking in French). — I am convinced that the words *which are national or nationalised* should be omitted.

Mr. H. O. MANCE (Great Britain; speaking in French). — No, they must not be omitted.

M. MONTARROYOS (Rapporteur; speaking in French). — And here was I about to prove to M. Avramovitch that he could accept your proposal, M. Detœuf!

M. PERIETZEANO (Roumania; speaking in French). — We might form a small sub-committee composed of General Mance, M. Detœuf and M. Avramovitch.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — That is not necessary. I think it would be better for this question to be settled in Committee. I should be happy if General Mance would adopt our view.

M. MONTARROYOS (Rapporteur; speaking in French). — Allow me to ask M. Perietzeano this question:—Are goods transported from a point A to a point B in your country national or nationalised? Would it be possible for you to transport from port A to port B in your country, goods which are neither national or nationalised? I do not think so. If you begin by answering this first question, we may arrive at a result.

M. PERIETZEANO (Roumania; speaking in French). — I will give you a striking example. The whole export traffic of Roumania is carried on in two stages. Cereals are loaded in the ports of the middle Danube and transported to the large port of Braila, the only one which sea-going vessels can enter. The cereals are here unloaded and reloaded into these vessels. The goods, in leaving the country, are no longer national either from the time when they leave the port of the middle Danube or from the time when they leave Braila. The same is true in the opposite direction; as sea-going vessels cannot ascend the Danube beyond Braila, the goods which they transport are warehoused and must be reloaded into another vessel in order to be carried further. You will therefore see what a concession I am making when I restrict local water transport to national or nationalised goods.

From the legal point of view M. Avramovitch is perfectly right in his demands, but it is none the less true that I also have good grounds for maintaining my view. I have made a concession. M. Avramovitch is not obliged to do as I have done.

We have discussed the question whether the transport of goods unloaded in the free zones could be reserved and considered as local water transport traffic. The question has been answered affirmatively. Nevertheless, goods are not national if they are unloaded in a free zone, and if a principle which is true as regards free zones were not so as regards a river having an international Commission, this latter would constitute a drawback, and we will not have it.

M. MONTARROYOS (Rapporteur; speaking in French). — M. Avramovitch seconds the Polish amendment except for the words *which are national or nationalised*.

M. WINIARSKI (Poland; speaking in French). — I do not insist upon these words.

M. MONTARROYOS (Rapporteur; speaking in French). — M. Detœuf thinks the words *which are national or nationalised* should be omitted. Does General Mance accept this omission?

Mr. H. O. MANCE (Great Britain; speaking in French). — I accept M. Perietzeano's explanation of these words, which in any case hardly apply to Yugo-Slavia. We have agreed upon a text which is a compromise, and now the Serbian Delegate asks for concessions and still more concessions. In my view the words *which are national or nationalised* are essential to mark the difference between the two cases stated by the Delegate of Roumania.

M. MONTARROYOS (Rapporteur; speaking in French). — The transport of goods in warehouse.

Mr. H. O. MANCE (Great Britain; speaking in French). — Yes, and in this respect I think that the omission of these words would be a retrogression. As regards the word *regular*, that is another question. But I maintain that the words *which are national or nationalised* must be kept.

M. MONTARROYOS (Rapporteur; speaking in French). — That, I think, is a point on which no concession can be made.

Mr. H. O. MANCE (Great Britain; speaking in French). — I think that the Delegate of Roumania and the Delegate of Poland will agree with me, because this clearly forms part of the compromise. As regards the word *regular*, I propose to interpret it in accordance with the usage in force on each individual river.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Not according to usage; it was against that that we fought from 1912 to 1919. Certain countries wished to impose upon us, on the Danube, usages which we could not and cannot accept.

Mr. H. O. MANCE (Great Britain; speaking in French). — Then it is a custom.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — This question will be solved neither by custom nor usage, but by justice and right.

Mr. H. O. MANCE (Great Britain; speaking in French). — If that is reasonable I am quite of your opinion. I accept the omission of the word *regular* if we can arrive at an agreement.

M. MONTARROYOS (Rapporteur; speaking in French). — There now remains only the question of the words *which are national or nationalised*, but do you accept the Polish amendment?

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Allow me to explain our case. We are a country which exports certain products, and our whole national life depends on these products. We propose to build certain ports on the Danube, and these ports may possibly have free zones. We intend to accumulate there all our goods which are destined for exportation, and in the same way these free zones would receive from abroad goods intended to be distributed over our territory. In view of the fact that the Iron Gates form an obstacle to the entry of large vessels coming from the sea, to ask me to make this concession would be asking me to sacrifice the vital interests of my country. With the best will in the world I cannot assume this responsibility, and I therefore propose to delete the words *which are national or nationalised*. In special cases, in order to meet the wishes of certain countries or certain commercial enterprises, we shall always be prepared to negotiate and settle the question in the most friendly fashion possible; but we ask you not to allow a provision to remain, if the right to apply it could be exacted. I do not wish to appear one of the irreconcilables, but I am convinced that my opinion is shared by the majority of the delegations, although they do not actually say so. I earnestly beg General Mance to agree to the omission of the words *which are national or nationalised*.

Mr. H. O. MANCE (Great Britain; speaking in French). — In the case cited by M. Avramovitch, if the Serb-Croat-Slovene State creates free zones in these ports, it will be free to make what regulations it likes for the free zones.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It will not make any, because according to your text they may be misused.

M. MONTARROYOS (Rapporteur; speaking in French). — I think that M. Avramovitch's view is not just, and the only point of view which I adopt is that of justice.

In order that the transport of goods which are not national or nationalised may take place, the first condition is that there should be a free port. But the word *free port* presupposes freedom of transport for other countries as well.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Certainly.

M. MONTARROYOS (Rapporteur; speaking in French). — It is unjust therefore for you to reserve for your own local transport traffic the whole transport of goods proceeding from a free port.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — For the purpose of clearing up this situation we should like a statement to be inserted either in the Final Protocol or in the Report. We do not wish to reserve this transport exclusively for ourselves, but we do not wish to be excluded from free ports.

M. MONTARROYOS (Rapporteur; speaking in French). — There is nothing to prevent you from transporting goods if you have the vessels.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Allow me to take an example. Let us suppose we have a free port. Goods coming from abroad are accumulating there; they are not yet nationalised, but they may be nationalised in any of our ports by being introduced into the country itself. As the Government which has caused these goods to accumulate in the free port, I order my State river-craft to take these goods and distribute them in my ports, where they will be nationalised. But when I arrive with my vessels to take these goods, you will tell me that I have not the right to do so.

M. MONTARROYOS (Rapporteur; speaking in French). — If the goods are nationalised you have the right.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — But they are not nationalised; they are warehoused in the free port.

Here is another case on which the Sub-Committee took a vote. It was said that seaports, even those which have free zones, can, from the point of view of local transport traffic, be given the same status as national ports. Why exclude from this status a free port on an international river? That is a question of justice.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — No-one will deny you the right of carrying on transport traffic if you do not ask for the exclusive right to do so.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — But it is this exclusive right which we do desire.

M. MONTARROYOS (Rapporteur; speaking in French). — I think it is fair that there should be no exclusive right as regards non-nationalised goods proceeding from a free port.

M. PERIETZEANO (Roumania; speaking in French). — Is this provision to apply everywhere?

M. MONTARROYOS (Rapporteur; speaking in French). — Certainly.

M. PERIETZEANO (Roumania; speaking in French). — But it does not. The beginning of the article reads : *Transport... between two ports...*; it does not add of *national or nationalised goods*.

M. MONTARROYOS (Rapporteur; speaking in French). — It does not speak of free ports.

M. PERIETZEANO (Roumania; speaking in French). — It does not speak of anything.

M. MONTARROYOS (Rapporteur; speaking in French). — I took a passive part in the drafting of this article, but in my view there was no question of these ports. Moreover, as regards the rivers of South America, for example, the question of free ports does not arise.

M. PERIETZEANO (Roumania; speaking in French). — Then you would not object to the introduction of the words *which are national or nationalised* in the first paragraph of section 1 of Article 4? We will accept these words in the second paragraph if you will accept them in the first, but I am quite sure that you will not introduce them into the first paragraph.

M. MONTARROYOS (Rapporteur; speaking in French). — You must ask General Mance that question, because my rôle is that of a conciliator between the two opposing claims.

M. PERIETZEANO (Roumania; speaking in French). — The discussion which has taken place is of great importance. The first paragraph states :

A riparian State situated on a natural system of navigable waterways of international concern is entitled to reserve for its own flag the transport of passengers and goods between two ports...

There is no mention here of national or nationalised goods, whereas the second paragraph states : *passengers and goods which are either national or nationalised*.

M. DETCEUF (France; speaking in French). — I should like to point out to M. Perietzeano that he appears to forget the origin of the discussion. Two views were expressed as regards those very usages which M. Avramovitch does not wish to hear mentioned, and also with regard to the provisions introduced into the Treaty of Peace. I do not say that you for your part have ever adopted the other view, but there were on the Sub-Committee a certain number of delegations which were strongly of the opinion that a number of rights had been conferred upon them by treaties of peace and current usage, whereas you maintained that this was not so. The wording in question is, as has been said, a compromise.

M. PERIETZEANO (Roumania; speaking in French). — I accept it.

M. DETCEUF (France; speaking in French). — There is no question here of rivers accursed as it were, but of rivers on which certain usages and certain treaties have given certain rights...

M. PERIETZEANO (Roumania; speaking in French). — Accursed rights!

M. DETCEUF (France; speaking in French). —...which you curse, and with regard to which a compromise has been arrived at between the delegations which consider that they have at least some claim to these rights and those which consider that the rights do not exist. The two cases are by no means the same. The first refers to rivers on which local transport traffic rights have never been granted, and the second refers to rivers on which local transport traffic has hitherto been customary. Though you do not accept this view, other delegations consider it a very just one, and it was in order to find some common ground of agreement that a compromise was proposed.

M. PERIETZEANO (Roumania; speaking in French). — We are in complete agreement; the text proposed is the result of a compromise and not of a discussion,

which has clearly shown that the text is either fair or unfair. M. Montarroyos was endeavouring just now to prove that it was unfair to claim the right to reserve the local transport traffic of national or nationalised goods.

M. MONTARROYOS (Rapporteur; speaking in French). — I said that we were dealing with a compromise, and, if I may use the expression, a compromise is sometimes a balancing of injustices. We must judge from the ideal standpoint and also from that of immediate interests.

Mr. H. O. MANCE (Great Britain; speaking in French). — I strongly urge the Roumanian Delegate to accept our compromise in its present form; it maintains an existing situation.

M. PERIETZEANO (Roumania; speaking in French). — I have given my consent and I will not withdraw it.

Mr. H. O. MANCE (Great Britain; speaking in French). — Then there only remains the objection of the Serbian Delegation, which does not apply to any existing situation. We are therefore agreed upon a compromise accepted by all delegations save one, which has in mind a case that at present does not exist. I for my part have accepted the omission of the word *regular* in the second paragraph of section 1, but I would recall the fact that an appeal may always be made to the appropriate jurisdiction in order to obtain an equitable interpretation. The essential point now is to arrive at an understanding, and this is the desire of all.

The CHAIRMAN (speaking in French). — The Officers of the Conference are convinced that these questions have been discussed at length and consider that the discussion is closed.

M. SCASSI (Greece; speaking in French). — Excuse me, Mr. Chairman, but we do not think that the discussion is closed.

The CHAIRMAN (speaking in French). — We have been discussing the Polish amendment for two hours, and the discussion has been as intense as it has been complete. The arguments of the Serb-Croat-Slovene Delegation have also been stated very clearly, and have been understood by all. The same is true of the British case. I was therefore quite right to consider the discussion as closed. Unfortunately we are only too apt to forget the discussions which took place two or three days ago; the debate never finishes, and the reason is no doubt that mankind is not yet perfect.

M. SCASSI (Greece; speaking in French). — I am imbued with the same conciliatory spirit which animates us all, and the observations which I would like to make will be very brief. In order to reconcile the various views which have been stated regarding the question with which we are dealing, there was submitted to us at a meeting of the Sub-Committee a draft which was intended as an effort at conciliation. The Greek Delegation accepted it, although it marked a departure from the provisions laid down by the Treaties of Peace and the Covenant. It has been forgotten that we have formal texts, and that in part 12 of the Treaty of Peace (Articles 332 *et seq.* of the Treaty of Versailles) and also in Article 23 of the Covenant, immutable principles have been recognised. It is true that Article 338 of the Treaty of Versailles lays down that a General Convention shall be drawn up by a Conference. This is the article pleaded by the opponents of the claim which we are now supporting in favour of that complete freedom established by the treaties in question. I have already answered this objection; I said, and I still say that, after the authors of the Treaties of Peace, and therefore of the Covenant, have perpetuated certain principles and a regime in Articles 332 *et seq.* of the Treaty of Versailles, to credit them with the intention of cancelling these principles, by stipulating that a General Convention shall be drawn up by a Conference is to tax them with inconsistency at least. After having esta-

blished principles, would they appoint a Conference to change these principles? This is accusing them of inconsequence.

These principles admit of absolute freedom without restriction. We cannot escape from that, and our Conference cannot change these fundamental principles. The articles of the Treaty of Peace, together with Article 23 *e* of the Covenant, form our charter; it is an iron band which we cannot break without exceeding our powers. The question must not be removed from its proper surroundings and placed on sentimental or any other grounds. There can be no question of any kind of *capitas diminutio* to which the States would be subjected through the fact that an international Commission controls certain rivers. We cannot go beyond the bounds which the Treaties have fixed for the League of Nations.

The text drawn up by the Sub-Committee deviated but slightly from these principles, and at a pinch it could be accepted. But a second text has now been presented in Committee, and this time the deviation is much greater. The Greek Delegation wondered whether, in spite of the conciliatory spirit which it ought to show, it could accept this text. But now we have gone far even from this text. All has been completely changed. The regime is completely overthrown. We are even encroaching upon the rights of Commissions. It is we who are to dictate what navigation acts should or should not contain. It is we who are to dictate in what manner decisions should be taken. In these circumstances the Greek Delegation cannot accept this proposal, and I make every reservation on the subject. The question which I raise goes beyond the bounds of our Committee, and even those of the Convention which we are examining. I will go so far as to say that it goes beyond the scope of our Conference. It is a question of principle.

M. PERIETZEANO (Roumania; speaking in French). — I should not have replied if the Greek Delegate had not spoken of the inconsistency of those who drew up the Treaty of Peace. Are you empowered to change treaties because you consider that they are inconsistent? No, you are not empowered to change Articles 332 and 338 because you consider that those who drafted them were inconsistent.

M. SCASSI (Greece; speaking in French). — I did not say that.

The CHAIRMAN (speaking in French). — Please do not interrupt.

M. SCASSI (Greece; speaking in French). — I ask to explain my words because their meaning has been misunderstood.

The CHAIRMAN (speaking in French). — You may speak in order to explain yourself.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Then I also shall ask to speak. This is not a question of sentiment, but of law.

M. SCASSI (Greece; speaking in French). — I have adopted a legal standpoint, and I say that the theory which claims that in virtue of the provisions of Article 338, the Conference has the right completely to change the regime established by Article 332 *et seq.*, implies that the authors of the Covenant and the Treaty are inconsistent because they are alleged to have established a regime and to say immediately afterwards : You may change this completely.

The CHAIRMAN (speaking in French). — I appeal to your spirit of conciliation. We have stated our cases freely, frankly and at great length for several days; do not let us return over the same ground. Let us come to a decision. If M. Avramovitch wishes to speak on the same subject, let me beg him to refrain in the interests of our work itself.

M. PERIETZEANO (Roumania; speaking in French). — I ask to finish my speech; I was interrupted. Article 338 is not a theory; it is clear and explicit. It enacts that

all that has been done in the preceding articles shall be replaced by what the Conference shall do. It is not for us to say whether the Treaty is right or wrong in doing this; the Conference can only accede to it.

M. KRBEC (Czecho-Slovakia; speaking in French). — Before the vote is taken I should like to state that I am prepared to accept the text proposed by the Roumanian Delegation, or that of the Polish Delegation, with the same reservations as those made by the French and British Delegations with regard to consulting the jurists.

Mr. H. O. MANCE (Great Britain; speaking in French). — I should like to draw attention to a slight modification which appears necessary in the first paragraph of section 1. We all agree as to the substance. The section speaks of the *transport of passengers and goods between two ports... placed under its sovereignty or authority*. I think that in order to render the text clear we should say : *the transport of passengers and goods loaded at one port and unloaded at another port placed, etc.*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I shall not reply to the Greek Delegate, but I reserve the right to do so later, if I think necessary; this is my indisputable right, in order to defend the interests of my country and not merely for reasons of sentiment.

I cannot see why the British Delegate still clings to the amendment of the Roumanian Delegate when the latter has withdrawn it, and everyone has accepted the Polish amendment because it meets particular cases. If he still wishes to discuss it, let me beg him not to say that everyone agrees with him. Everybody has accepted the Polish amendment. The discussion bears upon the words *which are national or nationalised*. Let us vote on this article with a reservation as regards these words.

M. SCASSI (Greece; speaking in French). — M. Avramovitch has alluded to what I said. I was merely replying to the Roumanian Delegate, who spoke of rights of tutelage and of *capitas diminutio*, and not to the Serbian Delegate at all. I cannot see therefore why the latter should have replied to me.

M. PIERRARD (Belgium; speaking in French). — We are now about to vote, after a very long discussion which has brought into play important principles and also questions of detail which may be important for certain delegations and unimportant for others. I intend to reserve my vote; I do not think we can vote after such a confused discussion and without having a text before us.

M. MONTARROYOS (Rapporteur; speaking in French). — I entirely agree. We have a text, but the question of the words *which are national or nationalised* is still outstanding. In these circumstances we will postpone the vote until later.

The meeting adjourned at 2 p.m.

FOURTEENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Saturday, April 16th, 1921, at 4.30 p.m.)

DISCUSSION OF ARTICLE 4 (contd.)

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 4 (Contd.)

The CHAIRMAN (speaking in French). — We will resume the discussion of Article 4 which is intended to replace Articles 4 and 16. A new text has been distributed, which I will read to you.

ARTICLE 4.

As an exception to the two preceding Articles, and in the absence of any convention or obligation to the contrary :—

(1) A riparian State situated on a natural system of navigable waterways of international concern is entitled to reserve for its own flag the transport of passengers and goods loaded at one port placed under its sovereignty or authority and unloaded at another port placed under its sovereignty or authority. A State which does not make use of these powers may refuse the benefit of equality of treatment as regards such transport to any co-riparian State which does make use of it.

On the navigable waterways referred to in Article 1a), and except when complete freedom has already been proclaimed or may subsequently be proclaimed unanimously by the States represented on the international Commission, the Navigation Act shall leave the riparian States the right to reserve the local transport of passengers and goods which are either national or nationalised.

(2) When a natural system of navigable waterways of international concern, which does not include waterways of the kind referred to in Article 1a), only separates or passes through two States, and provided that these two States are in agreement, they are entitled to reserve for their own flags the transport of passengers and goods between two ports situated on the said system, unless this transport takes place between two ports not situated under the sovereignty or authority of one and the same State, in the course of a voyage which is effected without transshipment and which includes a sea passage or passage over a navigable waterway of international concern not belonging to the above-mentioned system.

M. KASAMA (Japan: speaking in French). — I should like to put a small question with a view to throwing light upon the discussion. As regards Article 16 of the Draft Convention on Navigable Waterways, the *Green Book* gives for the words *local transport* a semi-official interpretation as follows (1) :—

The words *local transport* signify transport other than imports, exports or traffic in transit, with or without transshipment from one vessel to another, with or without unloading on to a quay, with or without warehousing *en route*.

I wonder whether this interpretation is maintained for the new text which we have before us, particularly as regards the second paragraph. Before the words *without transshipment*, the words *with or* have been omitted. I should like an explanation of this, particularly as regards continuity of transport.

(1) See p. 428.

The CHAIRMAN (speaking in French). — Everyone has heard the question of M. Kasama, of the Japanese Delegation. I think that the Committee's intention has not changed since the *Green Book* was drafted.

M. DETCEUF (France; speaking in French). — The meaning is still that indicated in the *Green Book*. Section 1 of Article 4 refers to local transport and therefore corresponds to the former Article 16. Section 2 refers to inter-State transport, and corresponds to the former Article 4. The words *local transport* are only used in the second paragraph of section 1, and they have the meaning indicated in the *Green Book*.

The CHAIRMAN (speaking in French). — Does everyone agree? Has the Rapporteur any remarks to make?

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — No.

M. KASAMA (Japan; speaking in French). — I am pleased to hear the explanation which M. Detœuf has given. I proposed an amendment to the second paragraph. Instead of *without transshipment*, I should like the words *with or without transshipment*.

Mr. H. O. MANCE (speaking in French). — Will you allow me to say that these words are excluded from the draft on which we have agreed? I therefore ask the Japanese Delegation to be so good as to withdraw its amendment in order that we may obtain unanimous agreement.

M. KASAMA (Japan; speaking in French). — I am prepared to withdraw my amendment, but nevertheless I should like the words *without transshipment* to be followed by the words *on the above-mentioned system of waterways*, without making any other change.

M. TSANG-OU (China; speaking in French). — That is not enough, and besides, we already have a final text. If we continue to change words and phrases, I also shall be obliged to ask for certain precisions.

Mr. H. O. MANCE (Great Britain; speaking in French). — The question has been asked: What would happen if a voyage were made partly by sea and partly by river? It was asked that the river portion of the voyage should be considered as a part of the maritime portion, and should be treated on the same footing. In the first text, therefore, we do not say *local transport* but *transport of passengers and goods between two ports placed under its sovereignty or authority...* We consulted our legal experts to ascertain whether this text was satisfactory, and whether this text might not have the effect of excluding vessels touching at a port without taking on board goods or passengers. The jurists declared that it was somewhat dangerous, and it was in order to safeguard this point that we inserted the words proposed by M. Hostie and accepted: *loaded at one port and unloaded at another port*.

M. TSANG-OU (China; speaking in French). — Does this transport refer to transport by waterway?

Mr. H. O. MANCE (Great Britain; speaking in French). — Obviously.

M. TSANG-OU (China; speaking in French). — By the words... *between ports placed under the sovereignty or authority...* we are to understand either seaports or river-ports.

M. DETCEUF (France; speaking in French). — They refer both to seaports and to river-ports. If two ports are placed under the sovereignty of one and the same State, whether one of these ports is by a sea and the other on a waterway system or not, the State may reserve the right to load goods at one port for conveyance to another port. The British Delegation feared that transport from one port to another might

be interpreted as prohibiting a vessel from continuing to transport any particular merchandise to another port, on the pretext that the vessel had already called at a previous port. Of course after a vessel has discharged part of its cargo in one port, it has the right to discharge another part in another port, on condition that it has not taken fresh cargo on board at the first port.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — As a matter of fact, the second text has absolutely the same meaning as the first. I may recall this first text, which reads as follows :—

A riparian State situated on a natural system of navigable waterways of international concern is entitled to reserve for its own flag the transport of passengers and goods between two ports placed under its sovereignty or authority.

The modified text now before us says exactly the same thing.

M. DETCEUF (France; speaking in French). — I repeat that the British Delegation feared lest the text which we had proposed might be interpreted as prohibiting a riparian State from calling a successive ports in order to unload goods or to convey goods destined for another country. Suppose, for example, that a vessel with its hold full of goods unloads half of these goods in one port. It is fully entitled to unload another part in a second port, and what remains in a third. I will take an example. A vessel proceeding from Le Havre arrives at Pernambuco. It leaves half its cargo there. It then proceeds to Manaus. The fear has been expressed that the text of the article might be interpreted as prohibiting this ship from transporting the goods to Manaus and unloading the rest of its cargo there.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — But since it does not unload at Pernambuco...

Mr. H. O. MANCE (Great Britain; speaking in French). — That is a instance of the definite transport of goods. The vessel does not take on board goods in one port of a State in order to transport them to another port belonging to the same State. It merely discharges part of its cargo in one port and another part in another. Our legal expert, Sir Cecil Hurst, has advised us to introduce this detailed statement into the article in order to avoid any misunderstanding.

M. TSANG-OU (China; speaking in French). — The *Green Book* defines exactly what must be understood by local transport (1) :—

The words "local transport" signify transport other than imports, exports or traffic in transit, with or without transshipment from one vessel to another, with or without unloading on to a quay, with or without warehousing *en route*. In the latter case, continuity of transport is not considered to have been interrupted, whilst, on the other hand, any intermediate railway transport would constitute such an interruption. For purposes of clearness, the following three illustrations may be given :—

1. "Free" goods are transhipped in a port, then declared in consumption and, finally, are reforwarded to another port belonging to the same State; this last stage constitutes local transport.

2. Goods liable to customs duty have been "cleared" (dédouanées) in a port but not transhipped. Their subsequent transport to another port of the same State does not constitute local transport.

3. Goods liable to custom duty have been "cleared" and transhipped, but are covered by a through bill of lading; their subsequent transport to the port of destination does not constitute local transport.

The *Green Book* therefore gives a much clearer explanation.

M. DETCEUF (France; speaking in French). — The definition in the *Green Book* does not correspond to the rules adopted in the reservation regarding coasting trade, whereas what we have stated does correspond to what is intended by that expression.

(1) See p. 428.

A State reserves for itself the right to load goods in one of its ports in order to transport them to another of its ports.

M. POLITIS (Greece; speaking in French). — I should like to be given a simple explanation. A sea-going vessel arrives at the mouth of a river, it unloads its goods into a warehouse. The goods are cleared or not. They are warehoused in order to be distributed along the river. Is this operation considered as local transport?

M. DETÈUF (France; speaking in French). — Certainly.

Mr. H. O. MANCE (Great Britain; speaking in French). — The second paragraph of section 1 leaves this transport free. In the first paragraph we do not speak of local transport, and we used the following words... *loaded at one port placed under its sovereignty or authority and unloaded at another port...*

M. WINIARSKI (Poland; speaking in French). — I was somewhat surprised to note that this text had been changed without the Committee's being consulted, but I will not make it a question of principle, and I merely ask that the words *local transport* should be inserted in both paragraphs of section 1 instead of the word *transport* in the one part and *local transport* in the other.

M. DETÈUF (France; speaking in French). — We do not intend to define here what is meant by *local transport*, but I will point out that though these words are perfectly in place in the second part of the section they have never appeared in the first.

M. WINIARSKI (Poland; speaking in French). — I made this proposal simply with a view to uniformity.

M. DETÈUF (France; speaking in French). — The definition given in the first paragraph of Section 1 corresponds to the general definition of national water transport. The expression *local transport* used in the second paragraph is the result of the compromise to which we have so often referred. It is for this reason that the words *local transport* appeared in the second and not in the first paragraph of Section 1.

M. PERIETZEANO (Roumania; speaking in French). — Do not the words *on the navigable waterways referred to in Article 1 a), and except when complete freedom has already been proclaimed or may subsequently be proclaimed unanimously by the States represented on the international Commission* refer to the occasions when this freedom is proclaimed in the Treaty? The terms which we are preparing today are intended to replace those of the treaties.

M. WINIARSKI (Poland; speaking in French). — We agree.

M. PERIETZEANO (Roumania; speaking in French). — We understand by that occasions on which it is proclaimed other than those in the Treaty of Peace.

M. DETÈUF (France; speaking in French). — The wording would be better if we said *or which have already been proclaimed in a previous navigation act*.

M. PIERRARD (Belgium; speaking in French). — Do the words *except when complete freedom has already been proclaimed* refer to the Act of Mannheim? Hitherto it has only been a question of the Danube. May I now speak of the Rhine?

M. DETÈUF (France; speaking in French). — These words certainly do refer to the Act of Mannheim.

M. WINIARSKI (Poland; speaking in French). — In my opinion also it is referred to here.

M. DETCEUF (France; speaking in French). — On the Rhine, freedom of navigation was proclaimed without any reservation in respect of local transport traffic by the Act of Mannheim. The reservation in Article 4 refers amongst others to the Act of Mannheim.

M. PIERRARD (Belgium; speaking in French). — This may be considered as a personal opinion. We should like to have an official opinion.

Mr. H. O. MANCE (Great Britain; speaking in French). — I propose that it be stated in the report that it is the Act of Mannheim to which reference is made.

M. PERIETZEANO (Roumania; speaking in French). — Do these words refer to the Treaty of St.-Germain?

M. WINIARSKI (Poland; speaking in French). — The terms of the Treaty of St.-Germain are provisional.

M. PERIETZEANO (Roumania; speaking in French). — You have heard the contrary maintained this morning. It must be clearly stated that these terms in the Treaty of St.-Germain shall cease to exist when we have adopted these articles.

M. WINIARSKI (Poland; speaking in French). — The Treaties of Peace and also the treaties signed between the various States and the Principal Powers establish a provisional regime intended to last until the general Convention has been concluded. These treaties cannot possibly be referred to by the words *a previous navigation act*.

The CHAIRMAN (speaking in French). — They refer to a navigation act properly so-called.

M. PERIETZEANO (Roumania; speaking in French). — If we simply speak of *a navigation act*, I shall have nothing more to say.

M. DETOEUF (France; speaking in French). — We also accept.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — It is dangerous to say that a treaty is not a navigation act. The expression *navigation act* must be taken in its widest sense; it signifies an international contract which governs the navigation of any particular navigable waterway.

As regards the Treaty of Peace or the Treaties connected therewith, the interpretation given by the Polish Delegation is beyond question. The Treaty itself states that its terms shall be superseded by the terms of the General Convention.

M. PERIETZEANO (Roumania; speaking in French). — The best proof that this interpretation is not beyond dispute is that it is being disputed in your presence. It was claimed this morning that you cannot substitute your Convention for the Treaty of St.-Germain. The question must be definitely settled.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In order to avoid any misunderstanding, I beg the Conference to agree to the insertion of the following statement in the Final Act :

The provisions of the articles of the Treaty of St.-Germain shall be superseded by the provisions of the present Convention. This is in brief what the Secretary-General told us a moment ago.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The question has been solved by a provision which already exists in the draft Final Act (1).

It is said that these Conventions are intended to form part of the group of conventions referred to in Articles 338 and 379 of the Treaty of Versailles and the corresponding articles in the other treaties. Article 338 states that the regime provided for shall be superseded by that of the present Convention.

M. PERIETZEANO (Roumania; speaking in French). — Except that this Convention specially refers back to the treaties.

The CHAIRMAN (speaking in French). — It will be mentioned in the Report that this paragraph refers to the Convention of Mannheim and that it does not refer to Article 338 of the Treaty of Versailles.

M. PIERRARD (Belgium; speaking in French). — The question is of the greatest importance to the States interested in the navigation of the Rhine. Paragraph 338 of the Treaty of Versailles reads :

The regime set out in Articles 332 to 337 above shall be superseded by the one to be laid down in a general Convention drawn up by the Allied and Associated Powers...

... that is to say, the Convention established at Barcelona. Further Article 354 states :

As from the coming into force of the present Treaty, the Convention of Mannheim of October 17, 1868, together with the Final Protocol thereof shall continue to govern navigation on the Rhine subject to the conditions herein laid down.

In the event of any provisions of the said Convention being in conflict with those laid down by the general Convention referred to in Article 338 (which shall apply to the Rhine), the provisions of the general Convention shall prevail...

That means that if we adopt here the Convention which, as regards the Rhine, is less liberal than the Act of 1868, to which I particularly refer, the new Navigation Act of the Rhine, intended to supersede that of Mannheim of 1868, must be adapted to the provisions enacted here and not to those enacted in 1868. We could not accept this interpretation.

M. LELY (Netherlands; speaking in French). — I agree with the Delegate of Belgium.

Mr. H. O. MANCE (Great Britain; speaking in French). — This question is of very great importance, and I think that we all agree to the proposal that it shall be noted in the Report and that the jurists shall be asked to alter the text if necessary, in order that it may meet this case.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). We all agree on this point that the provisions of the Act of Mannheim are referred to in the text with which we are dealing. That is quite clear. As regards the second point referred to by M. Pierrard, there is no doubt that the new Convention of Mannheim must conform to the present Convention. There is no danger in this, because it will conform to it by preserving the rights which are derived from the former Act of Mannheim.

M. PIERRARD (Belgium; speaking in French). — I venture to lay stress on the following point : If, in the Barcelona Convention, less liberal terms were adopted than

(1) The text inserted in the Final Act reads as follows :

"13. — The Conference declares that in Section 2 paragraph 1 of Article 5 of the Statute on the Regime of Navigable Waterways of International Concern the words "Previous Act of Navigation" refer, amongst others, to the Convention of Mannheim, but do not refer to the special regime created by Articles 332 to 337 of the Treaty of Versailles and the corresponding Articles in other Treaties of Peace."

those of the former Convention of Mannheim, we could not agree that the new Convention, which is to supersede that of Mannheim, should be less liberal than the latter, on the ground that the Barcelona Convention is less liberal.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The question is not whether the signatory States of the Treaty of Versailles would or would not agree to make the future Convention of the Rhine conform to the present Convention. This question has been decided,—they must conform to it. But when this Rhine Convention is discussed, they must take measures to prevent the Barcelona Convention from being made the ground for the adoption in it of less liberal clauses than those contained in the former Convention of Mannheim.

For this reason, by inserting in the article the words ... *except when complete freedom has already been proclaimed, which refer to rights and liberties existing in the former Convention of Mannheim, these rights and liberties will necessarily be introduced into the future Convention through the intermediary of the present Convention.*

M. DETŒUF (France; speaking in French). — Article 354 states that the new Navigation Act shall be drafted in conformity with the Convention. The text which we propose states that, except when complete freedom has already been proclaimed in a previous navigation act, that is to say in the Act of Mannheim, the navigation act will leave the riparian States the right to reserve the local transport of passengers and goods which are either national or nationalised. If, therefore, it is decided in the new Act that complete freedom of navigation is maintained, this will in no way clash with the text which we are now preparing.

M. PIERRARD (Belgium; speaking in French). — I am not convinced. In any case I shall ask for this question to be elucidated by the Committee of Jurists.

M. DETŒUF (France; speaking in French). — We have therefore two points to submit to the Committee of Jurists, including that which relates to the unanimous decision of the States represented on the International Commission (1).

M. PIERRARD (Belgium; speaking in French). — I shall ask the Chairman not to call a separate vote on the articles, but to have a vote taken upon them *en bloc*, in order that we may not incur the risk of destroying what we may subsequently have adopted.

The CHAIRMAN (speaking in French). — This proposal is certainly a logical one.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I should like to know whether the second paragraph of section 1 really means that on the navigable waterways referred to in Article 1a) the only powers allowed to riparian States—and which moreover will only be left to them if freedom has already been proclaimed—are the right to reserve the local transport of goods and passengers which are national or nationalised. The text does not say so, and if this is indeed the intention of the Conference I think the text must state that : ... *the navigation act will only allow the riparian States the right.* The first paragraph grants powers which are at once restricted by the second. If, as regards local transport, the Conference intends only to allow the riparian States the right to reserve the local transport of passengers or goods which are national or nationalised, the present text must be altered.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The affirmative form *allows* must be kept.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — No, because it is a restriction. If you make the form positive, it no longer has any meaning.

(1) See p. 251 and 252.

Mr. H. O. MANCE (Great Britain; speaking in French). — We must refer to the former text; we had no intention of altering that point.

M. PERIETZEANO (Roumania; speaking in French). — What difference is there between the first and second sections?

M. DETOEUF (France; speaking in French). — In the first place you have the words *which are national or nationalised*. You then have *local transport*, an expression which is not absolutely identical with that of *passengers and goods loaded... and unloaded*.

M. PERIETZEANO (Roumania; speaking in French). — Did you say that the second paragraph introduced a restriction?

M. DETOEUF (France; speaking in French). — The restriction refers to transport, and is not derived from the words *local transport*.

M. PERIETZEANO (Roumania; speaking in French). — These words *local transport* certainly need explanation.

M. DETOEUF (France; speaking in French). — The explanation is to be found in the *Green Book*, which states as follows (1) :

The words "local transport" signify transport other than imports, exports or traffic in transit, with or without transhipment from one vessel to another, with or without unloading on to a quay, with or without warehousing *en route*. In the latter case, continuity of transport is not considered to have been interrupted, whilst, on the other hand, any intermediate railway transport would constitute such an interruption. For purposes of clearness, the following three illustrations may be given :

1. "Free" goods are transhipped in a port, then declared in consumption and, finally, are re-forwarded to another port belonging to the same State; this last stage constitutes local transport.

2. Goods liable to customs duty have been "cleared" (*dédouanées*) in a port but not transhipped. Their subsequent transport to another port of the same State does not constitute local transport.

3. Goods liable to custom duty have been "cleared" and transhipped, but are covered by a through bill of lading; their subsequent transport to the port of destination does not constitute local transport.

M. PERIETZEANO (Roumania; speaking in French). — Then I ask for the words *local transport* to be deleted. The word *local* has been introduced without any discussion. We have not discussed the *Green Book*, and I thought that we had not to take it into account.

M. DETOEUF (France; speaking in French). — We have not discussed this word because, to my mind at least, the meaning of this word ought to be understood by all those present at this Conference, in view of the long discussions which have been held upon it.

M. HOSTIE (speaking in French). — I should like to point out that when we drew up this text two days ago, with the complete agreement of the Roumanian Delegation, none of us could have supposed that that Delegation was unaware of the meaning of the words *local transport*. It was actually at the instigation of M. Caracostea, the Roumanian Delegate on the Commission of Enquiry, that the examples illustrating the meaning of the words *local transport* were introduced into the *Green Book*. These words were chosen by common agreement with the Roumanian Delegation, and they occur in the Danube Act which is being prepared by a Conference at Paris.

(1) See p. 428.

The CHAIRMAN (speaking in French). — M. Caracostea was the principal author of the definition of the words *local transport*, because it was mainly the Danube which was under consideration.

M. PERIETZEANO (Roumania; speaking in French). — I do not know what M. Caracostea did at Paris. It is very difficult for all the delegates to know what their colleagues are doing. When we discussed we placed our cards on the table. We said :—What concessions do you require? I myself do not ever refer to what M. Caracostea may have said at Paris. What I say is that we have not discussed the words *local transport*, which I now see for the first time.

M. WINIARSKI (Poland; speaking in French). — I should like to say that I have no objection to the text proposed by M. Haas.

The CHAIRMAN (speaking in French). — The only changes which we have introduced this afternoon into the text which I read at the beginning of the meeting are the following : In the second paragraph of section 1, after the word *proclaim*, the words *in a previous navigation act* are added, and later, the following words are used : *the Navigation Act shall only allow the riparian States the right to reserve local transport...*

I will put to the vote the substance of the two paragraphs of section 1 of Article 4.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We have not discussed the words *which are national or nationalised*, but as proof of a conciliatory spirit, and in order to please the British Delegation, we accept these words.

Mr. H. O. MANCE (Great Britain; speaking in French). — I am most grateful to you.

The CHAIRMAN (speaking in French). — I will put to the vote the substance of the two paragraphs of section 1 of Article 4.

Section 1 of Article 4 was adopted by 23 votes to 1.

The CHAIRMAN (speaking in French). — I think that there will be unanimous agreement as to the substance of paragraph 2.

M. TSANG-OU (China; speaking in French). — We reserve the right to ask certain explanations regarding this article in plenary meeting.

The CHAIRMAN (speaking in French). — I put to the vote the substance of section 2.

Section 2 of Article 4 was adopted, 16 voting for.

The CHAIRMAN (speaking in French). — It is understood that M. Tsang-Ou reserves the right to ask for explanations at the beginning of the next meeting.

The meeting adjourned at 5.55 p.m.

FIFTEENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Sunday, April 17th, 1921, at 10.30 a.m.)

DISCUSSION OF ARTICLE 9

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF ARTICLE 9

The CHAIRMAN (speaking in French). — Yesterday we adopted provisionally Article 4 of the Convention; and this morning we begin the discussion of Article 9, which reads as follows :

(1) In the application of this article, all the riparians of a navigable waterway of international concern and of its tributaries of international concern shall be considered as riparians;

(2) Each of the riparian States is bound, on the one hand to abstain from any action likely to prejudice navigability or to reduce facilities for navigation, and on the other hand to take suitable measures as rapidly as possible to remove any obstructions and accidental dangers to navigation;

(3) If this navigation involves regular upkeep, each of the riparian States is under an obligation towards the other States to take the steps and to carry out the works necessary for this purpose on its territory, as rapidly as possible, having regard to the state of navigation at any period, and also to the economic condition of the districts served by the navigable waterway.

In the absence of any convention to the contrary, each of the riparian States will be entitled to demand from the other States, basing its demand on valid reasons, that they shall bear an equitable share in the cost of such upkeep;

(4) In the absence of legitimate grounds for opposition on the part of one of the riparian States, including the State which is territorially interested, based either on the actual conditions of navigability within its territory, or upon any other interests, such as, in particular, the maintenance of normal hydraulic conditions, the needs of irrigation, the utilisation of hydraulic power, or the necessity of constructing other more advantageous routes for communication, a riparian State may not refuse to carry out at the request of another riparian State the works necessary for the improvement of navigability, provided that the latter State offers to pay the cost and also to bear an equitable share of the excess costs of upkeep. Nevertheless, it is understood that these works cannot be undertaken so long as the State on whose territory they are to be carried out is opposed to them on grounds of vital interests;

(5) In the absence of any convention to the contrary, a State which is bound to carry out the works of upkeep may be released from this obligation if, with the consent of all the co-riparian States, one or more of them undertake to carry them out in its place; as regards works for improvement, the State which is bound to carry them out will be freed from the obligation if it authorises the State which proffered the request to carry them out in its place; the carrying out of works by States other than the State territorially interested, or their participation in the cost of these works, shall be assured without prejudice, as regards the State territorially interested, to its rights of control and administration in respect of these works, and to the prerogatives of its sovereignty or authority over the waterway;

(6) On the waterways referred to in Article 1 (a), decisions in regard to works will be pronounced by the Commission. These decisions may always serve as an occasion for an appeal under the conditions laid down in Article 19 below, on the grounds of incompetency or of a violation of the international conventions which govern the navigable waterways. An appeal based on any other grounds can only be made by the State territorially interested. The stipulations contained in the present paragraph are applicable subject to the special provisions of the navigation act.

The decisions of the Commission shall be in conformity with the provisions of the present article.

(7)

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — A fresh draft of this sixth paragraph has been circulated. I will read it :

On the waterways referred to in Article 1 (a), subject to any special provisions contained in treaties, conventions, or navigation acts :

(1) Decisions in regard to works will be made by the Commission;

(2) The settlement, under the conditions laid down in Article 19 below, of any dispute which may arise as a result of these decisions, may always be demanded on the grounds that these decisions are *ultra vires*, or that they infringe international conventions governing navigable waterways. A request for a settlement under the aforesaid conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decisions of the Commission shall be in conformity with the provisions of the present article.

I should like to know who is the author of this draft, and why it is presented to us. Complaints are already being made as to the slowness of our progress, and texts should surely, therefore, not be thus again laid open to discussion at the last moment.

I should like to make another statement. In various quarters complaints are being made that the Conference is dragging on, and that certain delegations are endeavouring to prolong the work. As far as we ourselves are concerned, we intervene in the debate only so far as we are driven to do so by the excessive demands put forward by certain delegations; but when we have done so it has never been against the aims of the League of Nations. The League of Nations is the work of the great nations as well as of the small. It is no less our work, for we contributed to its creation.

The CHAIRMAN (speaking in French). — I have been much impressed by the words which M. Avramovitch has uttered in tones of such sincerity. For a long time I have understood the position of those delegations which are most directly interested in the vital questions with which we are dealing. I am sure that the sole aim of the Serb-Croat-Slovene Delegation has ever been honestly to defend its national interests whilst reconciling them with the general interest.

In regard to the length of the discussions at the Barcelona Conference, I would add that at Madrid it took three months to settle postal questions which were questions of detail of relatively secondary importance. Far from being astonished, posterity cannot but applaud the shortness of the time devoted by our Conference to the discussion of the important matters which were submitted to us. Let us then be patient; let us show a spirit of mutual good-will! Thus only can we accomplish lasting work.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I should like to explain the reason for which a new text of this paragraph 6 has been circulated. It is the outcome of a discussion which took place the day before yesterday between the members of a small Committee, the result of an observation made by M. Hammerskjöld, secretary of the provisional Committee of the Court of Justice, who noticed in the original draft certain stipulations which would prevent the Permanent Court of Justice from dealing with certain disputes. This was the determining factor in the new text laid before us.

M. VALLOTTON (Switzerland; speaking in French). — M. Hammerskjöld has rendered yeoman service on this occasion.

The CHAIRMAN (speaking in French). — The Committee is free to take this new draft as a basis or not.

Mr. H. O. MANCE (Great Britain). — I should like to add a few words to the remarks of the Rapporteur on the subject of this new draft. The new text results from two

factors :—in the first place the old text did not meet the case of the European Commission of the Danube; it might even have involved modifying the composition of that body. It is for this reason that M. Perietzeano and I, although we did not see eye to eye on the subject of the European Commission of the Danube, were both of the opinion that the question should not be raised here, and we were able to arrive at an agreement on the first part of paragraph 6, which is now so worded as to remove the difficulty.

The second part of the text is due to the remarks made by M. Hammerskjöld, who has asked me to explain the matter to the Committee. Firstly,—and the Chairman will perhaps tell me if I am wrong,— the Permanent Court can only deal with disputes and not with appeals. We must therefore remove the possibility of there being an appeal from the Commission to the Permanent Court. Secondly, the Permanent Court only judges disputes between States, and not between a State and a Commission. These are the reasons for which the draft of paragraph 6 has been altered as follows :

The settlement under the conditions laid down in Article 19 below of any dispute which may arise as a result of these decisions.....

That is to say that if a dispute is brought before the Permanent Court, it must be brought by the State concerned, and not by the International Commission, in such wise that if the Commission complained that a State was not fulfilling its duties,—in respect of the upkeep of the river, for example—and if the State did not comply with the Commission's requirements, then the Commission could not appeal to the Permanent Court, but it would be open to another State represented on the Commission to do so. Such a procedure would be fully in accordance with the statutes of the Court. The matter is thus very simple.

M. PERIETZEANO (Roumania; speaking in French). — I am fully in agreement with General Mance. There are two kinds of International Commissions on the Danube,—the European Commission of the Danube, the jurisdiction of which extends from the sea over the mouths of the river and as far as it is navigable for sea-going vessels; and another Commission for the Middle and Upper Danube. I am again in agreement with General Mance in saying that the terms of this Convention are not applicable to the decisions taken by the European Commission of the Danube, the functions of which are much wider than those of the administrative Commission for the Middle and Upper Danube, and of the commissions for other rivers. The European Commission is a juristic person possessing a distinct entity; it carries out works and levies dues. With the Middle and Upper Danube, and with the other rivers controlled by international Commissions, the case is not the same. In applying Article 9, an exception should therefore be made for the European Commission of the Danube. By retaining the present wording of Article 9, we should be extending the powers of the European Commission of the Danube to the other Commissions, which would be most regrettable. If it be true that, in virtue of Article 9 in its present form, the European Commission of the Danube could not exercise its functions, it is equally true that in virtue of the new wording, the Middle and Upper Danube Commission would have powers identical with those of the Commission stationed at the mouths of the Danube—which would be clearly inadmissible. If the European Commission of the Danube takes a decision of whatever kind by a majority vote, it can have it carried into effect, ignoring opposition from any quarter. Thus, it has carried out important works, including the construction of a canal which has reduced by several kilometres that part of the channel of the river which flows through Roumanian territory. For this we are most grateful, and we would conserve to the European Commission of the Danube powers much wider than those granted to the other international Commissions. If the European Commission of the Danube decides by a majority to execute certain works, then there is no appeal,—except, of course, on the ground that it has exceeded its powers; if the Commission took a decision which was contrary to its Statute, an appeal would be made to the League of Nations on the ground that the Commission had exceeded its powers. With the Middle

and Upper Danube Commission, conditions are different; we wish to be able to appeal to the Court of Justice and to the League of Nations whenever, in our opinion, the Commission exceeds its competence, or even whenever it adjudicates ill. It must not have powers as extensive as those of the European Commission of the Danube.

Is the International Convention which we are making applicable to the European Commission? No, and for this reason:—we are empowered by the terms of Article 299 of the Treaty of St. Germain to substitute international conventions for the régime set up in virtue of Article 292, and Articles 294 to 298; whereas the European Commission of the Danube is mentioned in Article 301, which we cannot alter. Furthermore, the Middle and Upper Danube Commission is itself set up in virtue of Article 302,—also an article which we cannot modify, for it is not included in those articles of the Treaties of Peace in respect of which we have authority to take measures here. Further on, Article 303 clearly speaks of *the International Commission provided for in the preceding Article*. The preceding article is Article 302 which treats of the Middle Danube Commission, the European Commission being provided for under Article 301. Article 303 does not therefore mention the European Commission, which, in consequence, cannot be the one referred to in Article 302. Further on still, mention is made of *the decisions of this International Commission*. Of which International Commission? Still the one provided for in Article 302. It is stated that its decisions shall be taken by a majority vote,—these decisions must be those of the Commission of Article 302. Moreover, Article 301 lays down that *the European Commission of the Danube re-assumes the powers it possessed before the war*. No-one, then, can modify these powers. Then follows: *Nevertheless, as a provisional measure, only Representatives of Great Britain, France, Italy and Roumanias shall constitute this Commission*. The only temporary part of the provision is the composition of the Commission. Who is to be competent to modify it? The Treaty does not say. In any case it is not we who are competent.

What objection is there to excluding from the present Convention anything which will reserve the case of the European Commission of the Danube, since this existed before the war, and since it is nowhere stated in the Treaty of Peace that the Barcelona Conference will have the power to modify treaties. This Conference, in common with others, draws its powers from certain articles in the Treaties. As late as yesterday, we laid claim to our right to alter all the provisions contained under Article 292, and Articles 294 to 298, but there is no question of altering those contained in Article 301. It is not that I would not like to see this article consigned to the same place as the others, but it cannot be done; Article 301 is inviolate. The Danube Commission is inviolate in respect of its pre-war powers. Naturally, before the war its decisions were not subject to any appeal before any Court of Justice, for the good reason that one did not exist.

I had accepted the new wording because I recognise the fact that the decisions of the Danube Commission ought not to be subject to an appeal before the Court of Justice; but, on reflection, I consider this wording not only impossible of acceptance, but unnecessary. It has been said that under the former wording it would not be possible for a Commission to appeal against a State. Undoubtedly not; but it is not for the tribunal which has pronounced a verdict to bring an appeal against that verdict;—it is for the persons interested to make an appeal. The Commission itself, then, must not have the right of appeal, because it is already an instrument of justice. I am therefore of opinion that Article 9 should be retained in its present form. If necessary, we can state that we are leaving untouched the powers of the European Commission of the Danube, which, incidentally, is in no danger, because Article 301 of the Treaty of Peace recognises the same powers which the Commission possessed before the war, without any possibility of their being modified.

M. VALLOTTON (Switzerland; speaking in French). — This sixth paragraph is the result of a compromise fraught with much labour, and I think therefore that it would be well to leave it untouched. For my part I accept it in its present form.

M. PIERRARD (Belgium; speaking in French). — Which text, the new or the old?

M. VALLOTTON (Switzerland; speaking in French). — In the same way as the preceding one, the new text is the outcome of the different views which were exchanged; and unless the Roumanian Delegation presents us with a definite text, I fail to see as yet exactly what is desired. If the Roumanian Delegation will propose a definite text, I beg that it may be submitted to us in order that we may be able to give our verdict with a full knowledge of the facts.

M. PERIETZEANO (Roumania; speaking in French). — I ask for the retention of Article 9 with paragraph 6 as originally worded, so long as the new wording has only been proposed in order to meet the case of the European Commission of the Danube. If I have succeeded in showing you that the Danube Commission is exposed to no sort of danger, I propose that the new wording should not be taken into consideration.

The CHAIRMAN (speaking in French). — What is General Mance's opinion?

Mr. H. O. MANCE (Great Britain; speaking in French). — I think it is necessary to put something in the text.

M. PERIETZEANO (Roumania; speaking in French). — Why?

Mr. H. O. MANCE (Great Britain; speaking in French). — The obligations which fall upon every country as regards the European Commission must be respected, except as the result of any arrangement modifying them.

M. PERIETZEANO (Roumania; speaking in French). — But Article 301 cannot be modified. I beg you to read the Treaty once again.

Mr. H. O. MANCE (Great Britain). — It is a legal question. If the jurists state that it is not necessary to insert anything in Article 9, I am fully prepared not to intervene; but if they hold a contrary opinion, some change must be made. I think the fears of the Roumanian Delegate with regard to the Middle Danube Commission are groundless; that Commission's powers may be changed when a permanent Statute is established for the Danube.

M. PERIETZEANO (Roumania; speaking in French). — Do you wish to place us in touch with the jurists?

Mr. H. O. MANCE (Great Britain; speaking in French). — It must be left to the jurists to decide.

M. PERIETZEANO (Roumania; speaking in French). — I am unwilling to bow to the verdict of the jurists. I wish to attend their discussion. The inclusion you desire would signify that the same principle is being applied to the various commissions.

Mr. H. O. MANCE (Great Britain; speaking in French). — According to the Treaty, the powers of these Commissions cease to exist from the moment when a permanent Statute is adopted. The Middle Danube Commission is open to change.

M. PERIETZEANO (Roumania; speaking in French). — But will not this Convention change it?

Mr. H. O. MANCE (Great Britain; speaking in French). — The administrative powers of a commission are not touched by the Convention.

M. PERIETZEANO (Roumania; speaking in French). — But in Article 299 of the Treaty of St. Germain, reference is made to everything contained in Article 292, and Articles 294 to 298. This is clear.

Mr. H. O. MANCE (Great Britain; speaking in French). — Yes; these articles may be modified by the Convention.

M. PERIETZEANO (Roumania; speaking in French). — The powers of the Middle Danube Commission are not defined either in that place or anywhere else; under Article 301 the European Commission of the Danube re-assumes the powers it had before the war, without any possibility of their being modified. The Treaty gives us satisfaction as regards the question you raised, but not as regards the one which I myself have asked. The Treaty of Versailles contains certain articles which may be modified, but Article 301 of the Treaty of St. Germain happens to be one which cannot be modified.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Would General Mance be satisfied if the following words were added at the end of paragraph 6 : *Nevertheless, this paragraph does not cover Article ... concerning the European Commission of the Danube?*

M. VALLOTTON (Switzerland; speaking in French). — I intend to put in an amendment on behalf of the Swiss Delegation, in the following sense : ... *and in particular the provisions below, and amongst others Article 301 of the Treaty of St. Germain, remain in force notwithstanding the present Convention, subject to any subsequent unanimous agreements concluded between the riparian States.* It seems to me that in this way the previous speakers would receive satisfaction. That is the proposal which I shall have the honour to make later, and which I put forward now simply in order to indicate that the debate on the point could be deferred until the time when the general clauses on the concordance between the present Convention and subsequent conventions have been established.

M. PERIETZEANO (Roumania; speaking in French). — I do not consider that I have anything to say on what will happen later. We will discuss the future when the right time comes. I should prefer that fresh amendments were not presented now. The articles in question have been adopted; if fresh proposals are made now, and an article modified, then there is nothing for it but to revise the whole in order to gain an idea of the effect which all these changes may have on it.

The CHAIRMAN (speaking in French). — M. Hammerskjöld, Secretary of the provisional committee of the Court of Justice, will now speak.

M. HAMMERSKJÖLD (speaking in French). — I saw the new text of Paragraph 6 of Article 9 a few days ago. I am of opinion that it is in the interests of the Convention itself not to accept the text in its present form, because the Permanent Court of International Justice would inevitably declare itself incompetent as soon as the first dispute was referred to it.

In the first place, as General Mance has explained, the Permanent Court of International Justice is competent to arbitrate in disputes arising between States. The question whether it could be endowed with similar competence in respect of disputes arising between juristic persons and States has been many times discussed. The conclusion has been reached that an interpretation could be given to the effect that groups of States fall under the jurisdiction of the Court, but that disputes between juristic persons and States should be excluded from it. The Permanent Court of International Justice has the same competence as that of a tribunal of first instance; it cannot pass judgment on appeals. Paragraph 6 of Article 9, as it was formerly worded, gave judicial competence to River Commissions, stating that the decision of a Commission might be made the subject of an appeal before the Court,—in other words, that the Court would exercise the functions of a Court of Appeal. If a case of this kind were laid before the Permanent Court of International Justice, the latter would declare itself incompetent, and the machinery of the article would cease to operate. Lastly, the article contained a third difficulty, which, whilst of lesser importance, was nevertheless of sufficient seriousness : it was that in the majority of cases,—

whenever the party making the appeal was not a State territorially interested,—the draft provided for the Court being competent to annul the award. The Permanent Court of International Justice cannot exercise the functions of a Court of Cassation; it must always decide on the fundamentals of a question. It cannot say merely :— There is or there is not ground of incompetence; there is or there is not violation of such and such a treaty.

It is in virtue of my mission here that I have indicated these difficulties to certain members of the Committee, and have emphasised the fact that in the circumstances the best course to take would be to omit the paragraph. In view, however, of the objections which certain members of the Committee have seen fit to formulate against the proposal, for reasons which it is not for me to judge, I have drafted a new text which meets more or less the point of view of the Court,—that is to say, which safeguards the possibility of applying the article. In conclusion, I would lay stress upon the fact that the article as previously worded was not applicable. I would beg the Chairman, if necessary, to correct any inaccuracy in my remarks.

The CHAIRMAN (speaking in French). — M. Hammerskjöld's remarks have been in absolute conformity with the spirit of the statutes.

M. PERIETZEANO (Roumania; speaking in French). — Before touching upon the fundamental point of the question, may I be permitted to criticise the actual form of the speech which we have heard. The opinion which has been given with regard to the competence of the Court is a purely personal one; there is no question of a final opinion which is beyond criticism. Courts have been known to discuss their competence, and to declare themselves in turn competent and incompetent. In century-old jurisdictions like the French, I have known Courts of Appeal affirm successively their competence and their incompetence on the same matter, and it is for that reason that the Court of Cassation is responsible for deciding the exact competence of certain judicial bodies. I will go further. Even if the supreme Court took a decision confirming the observations made by M. Hammerskjöld, I could still wonder whether the same Court, if it met a few months later, would not be liable to take a contrary decision. If we reserve the right of appeal to a competent court, what will happen? The Court will declare itself incompetent,—that is possible. But if we accept it as a law of the Medes and Persians that the Court is incompetent, and set it down in the Convention, we shall deprive ourselves of any recourse, when all the time the Court may declare itself competent. In fine, we have not to know whether the tribunal to which we could address our appeal is or is not competent, and we ought to lay down that the decisions of international commissions are subject to appeal. If the supreme Court declares itself incompetent, we shall be left without appeal, but we can continue to believe that a further attempt may obtain better results, and we shall not have cut ourselves off from the option of returning before the Court.

A proposal has, I understand, been put forward which, in my opinion, would be calculated to give satisfaction to everyone; it is to omit paragraph 6 altogether.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — But paragraph 6 gives you full satisfaction.

M. PERIETZEANO (Roumania; speaking in French). — I have just succeeded in getting rid of the treaties which I designated yesterday as accursed, and you now place before me the new draft of paragraph 6, which constitutes a return to that state of slavery from which we thought we had escaped. But this discussion is superfluous; all that we have to do is to omit paragraph 6. What objection is there to my going before the supreme Court? If it tells me that my appeal cannot be allowed, then I will withdraw.

M. HAMMERKJÖLD (speaking in French). — I should like to give a few additional explanations. In reply to the statements made by M. Perietzeano, I do not dispute the fact that it may perfectly well happen that the Court determines its competence now in one fashion, now in another, if the circumstances upon which it has

to pronounce a verdict are not all equally clear or are dissimilar, but the Statute of the Court contains an Article, No. 43, which states that *only States or Members of the League of Nations can be parties in cases before the Court*. That is categorical, and we can go no further.

With regard to the right of the Court to judge appeals, I could give most exhaustive information, did I not fear that we should thus be led too far. I will content myself with observing that an analogy should not be drawn between the internal legislation of States, and international legislation. One of the best known characteristics of international legislation is that it can adjudicate only in first instance; of that I will cite only one example,—the Draft Convention on Maritime Prize Courts. Lastly, I would point out to M. Perietzeano, that although it may be perfectly true that certain parties can restrict the competence of the Court, or renounce part of that competence, yet they can never extend the competence of the Court beyond the point allowed by its Statute.

M. PERIETZEANO (Roumania; speaking in French). — I am sorry that M. Hammerskjöld should not have convinced me, in spite of his possessing the crushing advantage over me of being a man of law, whilst I am but a poor engineer, who has only the usual conceptions of law in his favour.

We have been told by M. Hammerskjöld that the law can only vary when it is a question of articles of which the sense is obscure, but that in the case now before us the law could not vary. My answer is that the question of the clearness of articles is so elastic that it has been possible for certain questions to be considered for centuries as perfectly clear and then suddenly to undergo complete transformation because a new element in law has been discovered. For example, at Paris there was a magistrate who judged that a woman who had stolen a loaf of bread was not guilty, and he judged in this sense according to the Code Napoléon, whereas the Code Napoléon formally denounces all appropriation of the property of another. In the same way with regard to enquiries as to paternity, which for centuries were forbidden, it was suddenly found possible that it should be no longer forbidden, by means of a subtlety :—We do not say that you are the father, but we order you to maintain the child. It is not for us to say whether an article is clear or not. Returning to the statement made by M. Hammerskjöld, I repeat what I have already said;— as I understand it, one State may make an appeal against another State which has applied the decisions of the Commission; I do not say that I should recognise the right of the Commission to go to law itself and appear before the supreme Court.

Suppose that I wish to carry out works on Serbian territory, and that in conformity with the terms of the Convention, I offer to pay for them. The Serbs refuse; it is a dispute between them and myself. The Danube Commission has given judgment. I am told :—Once the Danube Commission has given its verdict, that is all; the decision is final, and you have no further appeal. It is this which we wish to avoid; and this is the reason for which it would be best to allow the two parties to address an appeal to the supreme Court, with the option for the latter to discharge them on equal terms. The two parties must bow before such a decision, since it is incontrovertible. Accordingly, I propose simply to omit paragraph 6, Article 301 being adequate to meet the other question.

M. HOSTIE (speaking in French). — We have been told by M. Hammerskjöld that the original wording of that part of the article which relates to appeals has given rise to technical difficulties which are obviated by the present wording. We have only to compare the two texts in order to see that the substance of the question, which alone concerns us here, has not been touched. As a matter of fact, M. Hammerskjöld could easily have made his observations before the Jurists' Committee, and the Drafting Committee could have made the entire change without its occurring to anyone of us to accuse them of having exceeded their functions of mere drafting.

The objections of M. Perietzeano, to which I, for my part, would rather not refer, have reference to the first part of paragraph 6; they have nothing to do with the second part, and no argument against it can be drawn from them, for beyond the

drafting alteration to which I have referred, the text has remained in the form passed unanimously by the Sub-Committee.

M. PETERS (Germany; speaking in French). — We have been told that no appeal is possible against the decisions of the International Commission, because the Court of Justice of the League of Nations is only entitled to give judgment in first instance. General Mance added, if I understood him aright, that the States concerned would nevertheless be able to urge their rights and interests by bringing the decision before the Court of Justice of the League of Nations, in the form of a dispute between States. The complaint could then, under the heading of a dispute, take the place of an appeal.

I should like to be given some enlightenment upon the following point :—It is considered by a State that the terms of a treaty have been violated by the decision of a Commission, or that this decision is invalid on grounds of incompetence; the State accordingly desires to lay it before the Court of Justice. Against whom is it to prefer the complaint?

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — As M. Hammerskjöld has explained, the commissions as such cannot be parties to a dispute; and therefore if a State is dissatisfied with a decision on the grounds, either that the Commission was incompetent in the matter, or that the terms of international conventions have been violated,—to take only the contingencies cited by the German Delegate,—then that State should lay before the Court a charge against all the States whose representatives at the Commission took part in the decision.

M. VALLOTTON (Switzerland; speaking in French). — Not those which shared the views of the State which considers itself injured?

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I mean those which voted for the decision, and not those which voted against it.

The CHAIRMAN (speaking in French). — We have before us two proposals,—to retain section 6 in its present form, with the few alterations proposed by General Mance with the object of rendering it applicable in practice, or, as proposed by Roumania, to omit the section altogether.

Mr. H. O. MANCE (Great Britain; speaking in French). — The changes which I proposed tend to safeguard the régime provided for in existing treaties. The other changes are of a legal character and did not come from me. I was simply asked to give an explanation. The two amendments are quite distinct. One is rendered necessary by the existence of previous treaties with regard to the administration of certain rivers; the other is necessitated by legal difficulties. I proposed the new wording for the first part of paragraph 6 for motives quite other than those which prompted the changes in the second part.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — May I outline the circumstances in which section 6 was altered. The Representative of the Court of Justice had a conversation with me on his arrival, and I then took the initiative of inviting certain persons who were competent to draft a text safeguarding the jurisdiction of the Court, to draw up this text. Section 6 having, as a result, been refashioned, General Mance proposed a change. The first lines of the new text thus emanate from him; his draft was accepted; the other changes are the outcome of collaboration between various persons. There has been nothing mysterious in the manner in which these changes have been made. My greatest solicitude has been to assure to the supreme Court the possibility of judging disputes.

M. PERIETZEANO (Roumania; speaking in French). — But our Delegation wishes to assure something else.

M. VALLOTTON (Switzerland; speaking in French). — In spite of the imperfections which the system may have in the eyes of some of us, the small States have the greatest interest in accepting the compromise contained in Section 6. Speaking for myself, I am one of those who made remarks on the subject of the former text, and I consider that General Mance has rendered us a service in attempting to improve it. I offer my thanks to all those who collaborated in the work. In my opinion, the small States would simply be committing a folly by refusing to go hand in hand with the big States which have accepted these provisions,—contrary, perhaps, to their original intentions. I declare my acceptance of the proposed text.

M. PERIETZEANO (Roumania; speaking in French). — With whom was this compromise made? It is an anonymous one.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — A confusion has arisen. As explained by General Mance and the Rapporteur, two absolutely separate questions have been the subject of separate amendments which have no connection one with the other. The first six lines were intended to safeguard certain régimes which it appeared essential to take into account. The second part has no connection with the first. There is no object in mixing the two questions; and it would be well to vote separately on the two parts of the section.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I notice with regret the singular methods which have been adopted. Without taking the opinion of the Committee, without submitting anything to it...

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I beg your pardon. We had authority to do that which we did. The Sub-Committee sat, the small Committee sat; to-day we lay these texts before you.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I maintain that these texts have been submitted to us after the Sub-Committee has dispersed. M. Alvarez has left, and he himself stated the day before yesterday that this Article 9 had been submitted without his knowledge.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — As M. Alvarez did not attend the Sub-Committee the day before yesterday, we were not able to speak to him on the subject.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If we wish to accomplish our task, the best method is never to refer a question to the jurists—with all due respect to them—before it is submitted to the Committee.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — In order to avoid prolonging the discussion, I propose this amendment in my name.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — After discussion and voting, a text may be referred to a sub-committee and to examination by the jurists, but we are of opinion that texts produced at the last moment, and which we have not been able to study, cannot be discussed in committee. It is all the more unpleasant because when we ask for explanations there is a risk of our appearing insincere. I support the Roumanian proposal, which is my own proposal of yesterday. General Mance in conversation told me that he agreed to omit the section.

Mr. H. O. MANCE (Great Britain; speaking in French). — Not at all.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — When the jurists drafted this section, did they take into consideration merely those stipulations of the Treaty which concerned the Danube only, or were they also influenced by similar cases which may have arisen under Articles 1, 2 and 4 which we have already

voted? I protest against the procedure which has been followed, because the few persons who were present may be influenced by certain special cases which they desire to see safeguarded, and may be led to neglect other cases,—for example, those under Articles 1, 2 and 4, which are of vital concern for us.

M. KRBEC (Czecho-Slovakia; speaking in French). — There is some misunderstanding. The Serb-Croat-Slovene and Roumanian Delegations are forgetting that the beginning of the opening paragraph, which mentions treaties, conventions or navigation acts, only refers to works and not to the subject of Articles 1, 2 and 4. There is therefore nothing dangerous in this paragraph.

The CHAIRMAN (speaking in French). — There are only two proposals : first, the British proposal, which reproduces the terms of the new text proposed for the first paragraph of section 6; and second, the proposal formulated by the Roumanian and Serbian Delegations simply to omit the section altogether. It is the British proposal which I wish to put to the vote.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I take the liberty of observing, Mr. Chairman, that this would be contrary to the Rules of Procedure. The Rules lay down that of several proposals it is the most extreme which should be put to the vote. In this case the most extreme proposal is that to omit the whole section.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — If the question is put in this way, I would emphasise the absolute necessity for this section the omission of which would remove all means of appeal to the supreme Court.

Mr. H. O. MANCE (Great Britain; speaking in French). — I agree to a vote first on the omission of the old version of section 6.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The old and the new versions.

Mr. H. O. MANCE (Great Britain; speaking in French). — Nevertheless, after the vote has been taken as to omitting the old version of the section, I declare that I reserve the right to propose a new section dealing with quite another question.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — There will surely be some confusion in voting, seeing that the supporters of the contrary methods will find themselves at one in voting for the omission of the section. The Roumanian and Serbian Delegations propose definitely to omit all the subjects here referred to. General Mance, on the contrary, interprets the vote which is about to take place as allowing him to re-introduce one of the provisions contained in the British proposal.

The CHAIRMAN (speaking in French). — It would certainly appear that after the vote on the omission of the section, the Committee will have to decide whether it should pronounce a verdict, either on the British Delegation's proposal or on any other.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — The question ought not to be put in this way. If after having voted to omit the whole section, section 6 is once again to come under discussion, there will be no end to it. No deliberative assembly would countenance such a procedure.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — If the Committee decides by a vote to omit the section altogether, we shall devote no more time to these questions. If the vote goes against omitting it, we can discuss the British amendment and that concerning the legal aspect of the question.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — We agree.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — But I would observe once more that if we omit this section, the small States will be deprived of any means of appeal to the supreme Court.

M. VALLOTTON (Switzerland; speaking in French). — That is quite true.

M. WINIARSKI (Poland; speaking in French). — In order to avoid any misunderstanding, I must point out that the right of States to bring an appeal before the International Court of Justice is laid down in other international instruments, to which we are almost all signatory.

Mr. H. O. MANCE (Great Britain; speaking in French). — The opening phrase of section 6 refers to something entirely different from the rest of the section. That is the reason for which, even if the vote decided in favour of omitting the section altogether, I should reserve my right to propose a clause on the subject of the other questions which do not concern the question of jurisdiction.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I must continue to state that the vote ought not to take place under a misapprehension.

M. PERIETZEANO (Roumania; speaking in French). — If the discussion is to be re-opened, our Delegation also will speak again with regard to the substance of the question.

Mr. Robert HAAS (Secretary-General of the Conference; speaking in French). — In accordance with the Rules of Procedure, I ask to make a communication to the Committee.

The CHAIRMAN (speaking in French). — You are at liberty to speak.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I would observe that certain Delegations have asked that this section be omitted altogether in order to bring about the omission of the first part of it.

M. PERIETZEANO (Roumania; speaking in French). — How do you know?

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — It is impossible to vote on condition that the author of this first part is allowed to reserve the right to insert it in another place if it is decided by vote to omit it here. The import of a vote taken in these circumstances would be very far from clear.

M. PERIETZEANO (Roumania; speaking in French). — It is the questions which we dealt with in the old version of section 6 which cannot be re-introduced; any question not included in that may easily be brought before us again.

The CHAIRMAN (speaking in French). — I put to the vote the omission of section 6.

The proposal to omit section 6 was rejected by 19 votes to 5, with two abstentions.

M. TSANG-OU (China; speaking in French). — I abstained from voting because legal and local questions are involved which are outside my competence.

The CHAIRMAN (speaking in French). — We will now examine the British amendment.

M. PERIETZEANO (Roumania; speaking in French). — Here is an amendment which has been called the British amendment for barely five minutes; up till now it has been an orphan.

M. VALLOTTON (Switzerland; speaking in French). — Why call it the British amendment? On this point we are all united.

Mr. H. O. MANCE (Great Britain; speaking in French). — I propose that we vote now on paragraph 2 of the new section 6.

M. PIERRARD (Belgium; speaking in French). — How can we vote on the second paragraph without having given our opinion on the opening phrase? This opening phrase begins as follows : *On the waterways referred to in Article 1 (a), the provisions of the present article...* If we do not come to a decision on this passage, we shall, not know to what the provisions of the second paragraph apply.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — The expression "British amendment" is only a form of words. In reality the text emanates from the small Committee of the Sub-Committee, or, if you like, from the Rapporteur's amendment.

M. PERIETZEANO (Roumania; speaking in French). — The Rapporteur is not entitled to present amendments; he can only do so in his capacity as a delegate.

The CHAIRMAN (speaking in French). — As it was the British Delegation which made the proposal, I considered it to be a British amendment. I ask M. Perietzeano to be reasonable.

M. PERIETZEANO (Roumania; speaking in French). — All that I ask for is an explanation.

M. PIERRARD (Belgium; speaking in French). — M. Perietzeano is right in saying that the amendment is anonymous, but it is only a question of form, since any delegation whatever can sign it. Let those who supported it sign it, and the main question will be settled.

M. PERIETZEANO (Roumania; speaking in French). — Quite so.

M. VALLOTTON (Switzerland; speaking in French). — Paragraph 2 of the section contains a decisive point. In the Statute of the Court of Justice there are two principal points to notice. Paragraph 1 does not make competence a condition, and we wish to make it so. One delegation was opposed to the system of compulsory appeal going as far as I should have liked. As a proof of my desire for conciliation, I will take responsibility for this paragraph.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — The amendment is then submitted by Belgium, France, Great Britain and Switzerland.

Mr. H. O. MANCE (Great Britain; speaking in French). — May I be permitted to read the text, omitting for the moment 1 and 2 : *on the waterways referred to in Article 1 (a), subject to any special provisions contained in navigation acts.*

M. VALLOTTON (Switzerland; speaking in French). — I am sorry not to agree, although I pay due respect to the motives which prompted General Mance; I cannot admit the deletion of the words *contained in the said treaties, conventions or navigation acts*. We all wished to retain the mention of the Treaty of Peace of Versailles, and I fail to understand why we should go back upon a principle so just and logical.

M. PERIETZEANO (Roumania; speaking in French). — I maintain that this amendment with several authors does not exist, since these authors are not in agreement as to the suggested alteration to it. We cannot discuss until we have an amendment with a definite text.

Mr. H. O. MANCE (Great Britain; speaking in French). — I agree to add the words *treaties and conventions*.

The CHAIRMAN (speaking in French). — I will read the amendment again : *On the waterways referred to in Article 1 (a), subject to any special provisions contained in treaties, conventions or navigations acts...*

M. PIERRARD (Belgium; speaking in French). — *Existing*.

The CHAIRMAN (speaking in French). — I did not say that word; it is not in the text. I am about to begin the voting.

M. PERIETZEANO (Roumania; speaking in French). — This is a new amendment.

M. MONTARROYOS (Brazil, Rapporteur, speaking in French). — It is the same one.

M. PERIETZEANO (Roumania; speaking in French). — You presume to enforce your views; I for my part cannot admit that you should enforce them on me.

M. WINIARSKI (Poland; speaking in French). — Are we to understand : *subject to any special provisions contained in treaties, conventions or navigation acts in the future?*

The CHAIRMAN (speaking in French). — The authors of the amendment will reply to your question.

M. WINIARSKI (Poland; speaking in French). — The method is an extraordinary one.

The CHAIRMAN (speaking in French). — The question which M. Winiarski asks is whether future conventions, treaties and navigation acts are referred to or not.

Mr. H. O. MANCE (Great Britain; speaking in French). — Yes; previous and future conventions, existing at any time, at the present time.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — At any time? Then say so, General Mance, — *existing at any time or in the future*. Express your meaning more precisely. We must get out of this confusion. Mr. Chairman, I appeal to you to beg the various authors of the suggested amendment to enlighten us as to their wishes.

Mr. H. O. MANCE (Great Britain; speaking in French). — I propose to retain the substance of the old section 6, subject to any alterations necessary to satisfy the Representative of the Court of Justice. I think that we all understand the question.

M. AVRAMOVITCH (Serb-Croat-Slovene State) and M. PERIETZEANO (Roumania); (speaking in French). — No!

Mr. H. O. MANCE (Great Britain; speaking in French). — I do not think there is any advantage in pursuing the discussion further, and I beg the Chairman to agree to put the section to the vote.

M. VALLOTTON (Switzerland; speaking in French). — Certainly.

The CHAIRMAN (speaking in French). — I intended to do so. The meaning of the section is clear. It has been read and re-read.

M. PERIETZEANO (Roumania; speaking in French). — I asked to speak. Am I not to be allowed to do so?

The CHAIRMAN (speaking in French). — I considered that there had been sufficient exchange of views on the subject of omitting the section altogether.

M. PERIETZEANO (Roumania; speaking in French). — That question has been settled, and I do not return to it, but I should like to speak on the new text which is proposed to us. Would you wish us to put it to the vote without having allowed me to speak on it? You can do so, but we shall not vote.

The CHAIRMAN (speaking in French). — I have the very clear impression that we have deliberated fully on the question in the course of the meeting; the records will show it. We have no time to waste, and I therefore maintain my resolution to proceed to the vote.

M. PERIETZEANO (Roumania, speaking in French). — Do you declare the debate closed?

The CHAIRMAN (speaking in French). — I should like to ask for the opinion of the Committee on the subject of a closure.

M. WINIARSKI (Poland; speaking in French). — In the interests of the work, it would appear to me that as long as the subject has not been made quite clear, even if for a few delegations only, the closure cannot be applied. The question as to ... *treaties, conventions or navigation acts* has not been discussed. I ask that the debate be continued.

M. BIGNAMI (Italy; speaking in French). — Would it not be possible for speakers to express all their ideas in five minutes? It seems to me that in five minutes there is time to say all we wish to say. We can proceed to vote afterwards.

Mr. H. O. MANCE (Great Britain; speaking in French). — I suggest the closure.

M. PERIETZEANO (Roumania; speaking in French). — I am not quite clear as to the new amendment proposed. We declare that in face of existing conventions, treaties which are subject to modification cease to exist; we cannot allow to come in at the window what we have put out at the door. M. Vallotton has said: "We wish the Commission to take a decision". We for our part declare that we do not wish the Commission to take a decision. It is a fundamental question of substance. The objection has been raised against us that we shall be unable to present an appeal to the International Court because such an appeal would not be allowed. But there is nothing to prove that this is correct. We do not admit that certain provisions in certain treaties can be reserved. We do not admit the first paragraph concerning the Commission. We should perhaps admit the second paragraph if it were not modified. We cannot accept the beginning: ... *subject to any special provisions contained in treaties...*

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — It is because I have been deeply impressed by all that has happened up till now in connection with the discussion of this provision that I now speak. The special case referred to by General Mance is covered by an article of the Treaty. We for our part cannot possibly accept the beginning of the new section 6, for General Mance has stated before us that the words *treaties, conventions or navigation acts* refer to all agreements of whatever period. In spite of the great esteem in which I hold General Mance, who, whilst defending the interests of his country, also, to some extent, defends the general

interest, I cannot accept a provision which would bind us under those conditions. We have fought for years to eliminate certain treaties, and we cannot stipulate that all treaties in general should be mentioned here. M. Vallotton is not of this opinion; but may I be permitted to tell him that his country, which has rendered us great service, knows very well that we are much more directly concerned than it is. I reserve the right to discuss the substance of the question at the plenary meeting, when I shall appeal particularly to all the small States which have fought to protect their freedom.

M. WINIARSKI (Poland; speaking in French). — As we have admitted so many special cases, let us make one more provision still with regard to the European Commission to the Danube.

Mr. H. O. MANCE (Great Britain). — It appears to me that the two questions are being confused. I am only defending the section in order to bring the matter to an end; it should have been for M. Alvarez to do it. As regards the words *treaties and conventions*, I do not insist that they should be retained. I accepted them at the suggestion of M. Vallotton. If the Committee so desires, a separate vote can be taken on these two words. I consider that it would be well to vote on the section as a whole; it represents a compromise following much discussion, and if it is modified further, the compromise falls to the ground.

The CHAIRMAN (speaking in French). — M. Alvarez was recalled to Paris on urgent business, and this explains his not being able to defend the text.

M. WINIARSKI (Poland; speaking in French). — For myself I will willingly consent to the omission of the two words *treaties and conventions*, because I consider that the best starting-point for the regulation of such questions, which are special to each particular river, is the navigation acts.

M. PIERRARD (Belgium; speaking in French). — I should have preferred not to intervene in this discussion, but as the Serbian Delegate stated that his country had fought to abolish treaties, I would add that we were crushed because we wished to maintain existing treaties.

M. WINIARSKI (Poland; speaking in French). — We agree with M. Pierrard...

M. PIERRARD (Belgium; speaking in French). — Then let us vote now, for the situation is never the same for two minutes together.

M. VALLOTTON (Switzerland; speaking in French). — If I defend the words *treaties and conventions*, it is because I consider that the collective interests of the small States are here concerned. I would thank the big States for kindly supporting us in the matter, and I am convinced that if the delegates who oppose these two words had studied the question very attentively, they would have arrived at the same conclusion as I myself. I am of opinion that as a matter of fact they are acting contrary to the interests which they should be defending. He who is in possession of power has no need of legal guarantees in order to obtain satisfaction; law is essential for the weak. By extending the competence of the Court as widely as possible among the various States, it is to the small States that the big States are rendering a service. The words *treaties and conventions* apply to the whole of paragraphs 1 and 2; whereas *you* are always considering the question of decisions on the subject of works, *I* am thinking of the settlement of disputes, and when there is a treaty or convention which embraces wider stipulations than those of paragraph 2 with regard to guarantees for the settlement of disputes, I consider that it is in our interest to adhere to it.

M. BIGNAMI (Italy; speaking in French). — M. Vallotton has made an apologia for the words *treaties and conventions*; I myself have often dealt with this argument

in connection with the Treaty of Vienna. Since we can vote upon the whole of section 6 without these two words, I think it would be well first of all to put this section to the vote, and then to vote upon the Swiss amendment. In this way we shall be in possession of the definite opinion of the assembly. For myself, if it is a question of treaties existing at the present time, I agree; with regard to any others, I do not agree.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — As regards *decisions*, what decisions are meant, those relating to legal disputes or those relating to works?

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — It would appear that M. Avramovitch has not followed the discussion of section 6; it was precisely because the first draft invested the Commission with legal powers that we altered the wording. If the Commission were to have legal powers, the supreme Court would be incompetent to take cognisance of disputes. It is for this reason that we drafted section 6 in such a manner as to leave the Commission without these legal powers.

M. HOSTIE (speaking in French). — In order to satisfy both M. Bignami and M. Vallotton, there could be added, without in any way modifying the sense of the phrase, the words *navigation acts which exist or may be concluded*. This will indicate clearly that, in respect of the past, only agreements which are in force will be considered.

M. PERIETZEANO (Roumania; speaking in French). — If the Treaty of Versailles exists is it then applicable to the Convention?

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — That question has already been raised, and I believed that all the members of the Committee had understood it clearly. The Treaties of Versailles and St. Germain are existing treaties in respect of all their provisions which are not expressly mentioned in the text as having to be superseded by a convention. The question was settled unanimously by the Committee when Article 4 was discussed, and it is somewhat surprising that there should be a return to it to-day.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I believe that if the words *navigation acts and treaties* were left in, various difficulties would arise, because this Convention was to replace the whole contents of Articles 332 *et seq.* of the Treaty of Versailles.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — It is not a question of that article.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In my opinion, — and I would direct the attention of the Rapporteur to this point, — the words *navigation acts* should be maintained, and the words *treaties, conventions* omitted.

The CHAIRMAN (speaking in French). — I put to the vote the text of section 6 as modified :

On the waterways referred to in Article 1 (*a*), subject to any special provisions contained in treaties, conventions or navigation acts, which exist or may be concluded :

(1) Decisions in regard to works will be made by the Commission;

(2) The settlement, under the conditions laid down in Article 19 below, of any dispute which may arise as a result of these decisions, may always be demanded on the grounds that these decisions are *ultra vires*, or that they infringe international conventions governing

navigable waterways. A request for a settlement under the aforesaid conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decisions of the Commission shall be in conformity with the provisions of the present article.

Section 8 was adopted by 19 votes to 3, with 4 abstentions.

The CHAIRMAN (speaking in French). — I put to the vote the proposal to omit from the opening sentence of the paragraph the words *treaties, conventions or*.

The proposal was rejected by 13 votes to 5, with 7 abstentions.

The meeting adjourned at 1.25 p.m.

SIXTEENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Sunday, April 17th, 1921, at 5.30 p.m.)

DISCUSSION OF ARTICLE 9 (contd.) — DISCUSSION OF ARTICLE 1 (a) — AMENDMENT BY FRENCH DELEGATION TO ARTICLE 10 — NEW ARTICLES PROPOSED BY FRENCH DELEGATION — NEW ARTICLES PROPOSED BY CHINESE DELEGATE AND BY DELEGATE OF INDIA — STATEMENT BY CHINESE DELEGATION — STATEMENT BY JAPANESE DELEGATION — ADOPTION OF PREAMBLE

The meeting opened with M. Adatci, Vice-Président of the Conference, in the Chair.

DISCUSSION OF ARTICLE 9 (Contd.)

The CHAIRMAN (speaking in French). — In order to expedite our labours, I suggest that the following method should be adopted: with the exception of the authors of an amendment, or the Rapporteur, each speaker shall be entitled to speak for five minutes only and to speak only once on the same subject, save in very exceptional circumstances. I hope that everyone will try to conform as closely as possible to this rule, which I consider to be a wise one.

We will resume the discussion of the new draft of Article 9, section 6.

M. WINIARSKI (Poland; speaking in French). — Before discussion is opened upon this new text, there are various points which I should like to see settled; this may clear the air and eliminate any misunderstandings.

In the new version of section 6 which we adopted this morning, three questions arise. The first relates to the power of the Commission to decide as to works. Some ten days ago we adopted Article 11 (1) which states that the Commission shall indicate to the riparian States the action necessary for the upkeep of works and the maintenance of navigability. Is it not possible that this article is not completely in accord with the text which we adopted this morning, as regards the meaning of the word *decision*? If it is only a question of approving schemes, I will not press the point; but if the use of the word *decision* signifies that the Commission could impose upon the various States the carrying out of certain works, then the terms of Article 11 which we voted the other day might be found to conflict with the text which we voted this morning. The second question relates to jurisdiction, and is bound up with the general question of jurisdiction in respect of navigable waterways which is raised in Article 19. It might perhaps be well to compare the two texts, and entrust the jurists with the task of eliminating any contradictions which there may be. The third question concerns existing treaties and conventions; but on this subject we have still to discuss the various proposals made, and we shall therefore have occasion to go over it once more with all the leisure necessary.

Mr. H. O. MANCE (Great Britain; speaking in French). I am obliged by the absence of M. Alvarez to speak on this provision in reply to M. Winiarski. It is clearly understood that the word *decision* implies administrative, not executive decisions. Perhaps the distinction presents difficulties, and there may be some

(1) See p. 174.

advantage in giving an example. Administrative decisions refer to any works of maintenance which are required for navigation, such as the removal of an obstacle, but subject to any provisions to the contrary contained in a navigation act, a decision fixing the number of dredgers to be used, or the number of men to be set to work, would not constitute an administrative decision, and, in consequence, is not included under the text now before us.

M. WINIARSKI (Poland; speaking in French). I am satisfied with this explanation. The Drafting Committee will, I hope, see to it that the two texts concerning jurisdiction which I have mentioned are in agreement. If we all share this opinion, M. Montarroyos might devote a few words of his Report to this question of decisions.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I will say in my Report, then, that the decisions referred to in this text are administrative decisions (1).

The CHAIRMAN (speaking in French). — With regard to the second point raised by M. Winiarski in connection with jurisdiction, it is understood that the jurists will deal with it.

I will now consider the first paragraph of section 6 of Article 9, of which the new text reads as follows :

On the waterways referred to in Article 1 (a), the provisions of the present article are applicable subject to any stipulations contained in treaties, conventions or navigation acts which determine the powers and responsibilities of the international Commission in respect of works.

Subject to any special provisions contained in the said treaties, conventions or navigation acts...

Mr. H. O. MANCE (Great Britain; speaking in French). — The object of the British Delegation in proposing this text is to safeguard treaties and agreements now in existence which deal with the administration of certain rivers, in particular, the Danube. A careful study of the wording which was approved will reveal the possibility of the question being raised whether the European Commission of the Danube can maintain its administrative power in respect of works in the mouths of the Danube. I believe we are all in agreement in not desiring to make any change in the powers of this Commission.

I will give a second example. The Treaty with Hungary contains an additional article which is not found in the other Treaties of Peace; this article deals with the Iron Gates. Until the establishment of a final Statute for the Danube, an international Commission has been set up by the Treaties of Peace for the sector of the Danube situated above the sphere of administration of the European Commission. This Commission has been invested with the minimum powers necessary in order to carry out its administrative functions. With its powers is included the responsibility for the works of upkeep at the Iron Gates. This constitutes an administrative question which is outside the scope of our Convention. It was in order to maintain this *status quo* as thus regulated, that we put in the amendment. Incidentally, I would draw the attention of the Committee to the fact that this amendment only affects works.

The CHAIRMAN (speaking in French). — We are grateful to General Mance for his statement. The question is a straight-forward one, and in order to settle it, I will put to the vote the first part of section 6 of Article 9.

The passage was adopted by 12 votes to 2, with 1 abstention.

I will now read sections 7 and 8 :

7. Notwithstanding the provisions of the second paragraph of the present article, a riparian State may, subject to any convention to the contrary, close a waterway to navigation

(1) See p. 333.

either wholly or in part, provided that a riparian State or all the States represented on the International Commission, if one exists, consent to this closing.

As an exception, a navigable waterway of international concern for which no International Commission exists may be closed by one of the riparian States if the navigation of it is inconsiderable and if this State is justified by the fact that its economic interest is obviously greater than that of navigation. In this case the closing may take place when notice of such action is given one year previously, and subject to an appeal on the part of another riparian State under the conditions laid down in Article 19. If necessary, the decision will prescribe the conditions under which the closing shall be carried out.

8. Should access to the sea be afforded by a navigable waterway of international concern with several branches, situated in the territories of one and the same State, the provisions of paragraphs 2, 3 and 4 of this article shall apply only to the branch or branches considered necessary to give full access to the sea.

We have now read the whole of the article, and will go back to section 1.

Mr. H. O. MANCE (Great Britain; speaking in French). — I have a proposal to make with regard to section 1. It would appear to me that the definition which is there given of the meaning of the word *riparians* would be useful applied not only in connection with this article 9, but also throughout the Convention. Could we not entrust the Drafting Committee with the task of formulating such a proposal?

The CHAIRMAN (speaking in French). — As I did not take part in the work of the Sub-Committee, I can give my impartial opinion upon the text proposed. The agreement arrived at is perfect; provision has been made for every local and national susceptibility. For my part, if I were at the head of a delegation, I should vote for Article 9.

M. VALLOTTON (Switzerland; speaking in French). — I should be only too glad to second these words, but our colleagues in the Sub-Committee could say how far the agreement fell short of unanimity. We must bring this matter to an end, and I therefore wish to state in a general manner, without repeating the criticisms to which I have already given expression, that the Swiss Delegation does not approve the tendency of Article 9, especially as regards the second paragraph of section 3. The Swiss Delegation does not wish to oppose the compromise from which have sprung certain provisions of Article 9, but it has submitted to the Committee the text of a new article (1),—incidentally, an incomplete one. This text, which must be brought into accord with certain proposals made by the French Delegation, concurs in the same principle, namely, that Article 9 does not allow stipulations relating to the Rhine, the waterway which is of special concern to Switzerland, to be considered as abrogated or modified. I refer to the articles of the Mannheim Convention, which, moreover, are not expressly abrogated by Articles 355, 356, paragraph 1, 358 and 359 of the Treaty of Versailles.

At this stage of the discussion, it would be well to request the Chairman and the Officers of the Conference to supply us as soon as possible with a text as complete as possible of the actual Convention on Waterways, that is to say, that part of our work comprising the articles known as Formal Articles. I await this text in order to know whether I must ask for certain sections of Article 9 to be separated, or whether I can be content with the reservations which I have made to the article as a whole.

I simply wished to indicate the attitude of the Swiss Delegation, which, without desiring to delay the discussion, desires to state that it is not in agreement with the second paragraph of section 3 with regard to the right which a riparian State which

(1) The proposed text reads as follows :

“ Any treaties, conventions or agreements concerning navigable waterways concluded by the Contracting States before the date of the coming into force of the present Convention, shall not be abrogated as a result of this coming into force, as far as the signatory States of the said treaties, conventions or agreements are concerned.

“ In particular :

“ The provisions of the Rhine Navigation Act (Mannheim Convention of 1868) which were not abrogated by the Treaty of Versailles of June 28th, 1919, as also Articles 355, 356, paragraph 1, 358 and 359 of the said Treaty of Versailles, shall remain in force notwithstanding the terms of the present Convention, subject to any subsequent unanimous agreement between the riparian States ”.

is bound by the provisions of the Treaty of Versailles concerning the Rhine, would have of requiring from the other riparians of the river an equitable contribution towards the costs of upkeep. With regard to section 4, in the present state of the law governing the Rhine, the reservation with regard to vital interests appears to me open to discussion. For section 5 also I have certain reservations to make, with regard to the words :*the State which is bound to carry out the works of upkeep may be released from this obligation if, with the consent of all the co-riparian States, one or more of them undertake to carry them out in its place.* There is no knowing whether it is a question of temporary or of permanent exemption; the latter alternative would go too far and does not, I believe, correspond with the intention of the authors of the text. To sum up, the Swiss Delegation reserves its final decision on the subject of Article 9 until it can be seen whether the final text of the Convention gives satisfaction to the request put forward to-day with regard to the present wording.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — It is proposed by M. Vallotton to revert to the question in plenary meeting in connection with the Convention as a whole. We are pressed for time, and if to-morrow we are dealing with the Convention in Conference, it is certain that we shall not be able to discuss Article 9 again in Committee with the whole of the text before us.

M. VALLOTTON (Switzerland; speaking in French). — Quite so; I will abstain to-day.

The CHAIRMAN (speaking in French). — We will now return to section 1, and will then discuss the alteration proposed by General Mance.

Mr. H. O. MANCE (Great Britain; speaking in French). — I do not press the point, but if a change could be made it would be most useful.

M. BIGNAMI (Italy; speaking in French). — This section is quite clear as at present worded.

Mr. H. O. MANCE (Great Britain; speaking in French). — It is precisely because I consider it satisfactory that I desire it to apply to the whole Convention; otherwise we are including a definition of a riparian State in one particular article and not in the other articles where the word *riparian* also occurs.

The CHAIRMAN (speaking in French). — If no one else has any remarks to offer on the subject of section 1, I put it to the vote.

Section 1 was adopted.

The CHAIRMAN (speaking in French). — I will read section 2 :

Each of the riparian States is bound, on the one hand to abstain from any action likely to prejudice navigability or to reduce facilities for navigation, and on the other hand to take suitable measures as rapidly as possible to remove any obstructions and accidental dangers to navigation.

M. PETERS (Germany; speaking in French). — I will not encroach unduly on the Committee's time. I have a short statement to make concerning section 2 of Article 9 which obliges States to refrain from any action likely to prejudice facilities for navigation. Such an undertaking could not be entered into by the various riparian States unless in administering their rivers they had to take into account the requirements of navigation only, and could leave on one side any other interests in connection with rivers and riparian territory. In practice that is impossible. No administration can withdraw from the obligation of reconciling the interests of navigation with the other interests of the country, even if navigation is to suffer certain restrictions or hindrances. I will cite a characteristic example,—bridges. Every new bridge constitutes a certain hindrance to navigation, not only temporarily while

building, but permanently. In the same way, whenever a fresh ferry is established, navigation is impeded in a certain degree. But bridges must continue to be built and ferries established when they are required for communication between the two banks. The same applies to the laying down of cables in a river-bed, which often necessitates a prohibition to boatmen to cast or drag anchor at certain points. The erection of public baths on the banks of a river may compel steamers to reduce speed. Examples could be multiplied, but these suffice to show that the words *to abstain from any action likely to prejudice navigability or to reduce facilities for navigation* ought not to be understood as imposing an absolutely rigid obligation on the various States, but should be taken *cum grano salis*. These considerations might be taken into account by adding the following sentence :—

It is clearly understood that this obligation does not embrace any temporary restrictions or any restrictions of minor importance which may be established in the other interests of the country.

I will not propose this amendment formally; I should be satisfied if a passage were included in the records of the meeting and in the Report to the same effect as the remarks which I have made.

M. BIGNAMI (Italy; speaking in French). — I appreciate the justice of the German Delegate's observations, and I think that it is exactly in this sense that section 2 should be understood. Suppose for example that a certain volume of water is drawn off from an important river in order to supply the needs of irrigation. If a strict interpretation were given to this section, this would not be permitted. In my opinion the words *....likely to prejudice navigability...* were intended to mean *very perceptibly to reduce navigability*. I consider therefore that the benefit of the very just observations which have been made should be extended to other cases, and I should like to see them appear in the Report.

Mr. H. O. MANCE (Great Britain; speaking in French). — I agree.

M. PETERS (Germany; speaking in French). — I agree entirely.

M. VALLOTTON (Switzerland; speaking in French). — As we are expressing ourselves in Latin, I will take the liberty of adding yet another phrase :—*in medio veritas*. The salt must not be laid on too thickly. Surely we ought to remember, when we wish to deal with a waterway of international concern, that, as a matter of fact, from the legal point of view, such a waterway is primarily a means of communication. We are most happy to associate ourselves with the observations which have been made, but it is clearly understood that whenever there is a question of reconciling different interests, it shall be borne in mind that the first attribute of a waterway of international concern is that of a means of communication.

The CHAIRMAN (speaking in French). — Unless anyone has any further remarks to make, I will put section 2 to the vote.

Section 2 was adopted.

The CHAIRMAN (speaking in French). — I will read section 3 :

If this navigation involves regular upkeep, each of the riparian States is under an obligation towards the other States to take the steps and to carry out the works necessary for this purpose on its territory, as rapidly as possible, having regard to the state of navigation at any period, and also to the economic condition of the districts served by the navigable waterway.

In the absence of any convention to the contrary each of the riparian States will be entitled to demand from the other States, basing its demand on valid reasons, that they shall bear an equitable share in the cost of such upkeep.

M. Vallotton has formulated a provisional reservation in respect of this section. I put it to the vote.

Section 3 was adopted subject to the reservation made by M. Vallotton.

The CHAIRMAN (speaking in French). — I will now read section 4 :

In the absence of legitimate grounds for opposition on the part of one of the riparian States, including the State which is territorially interested, based either on the actual conditions of navigability within its territory, or upon any other interests, such as, in particular, the maintenance of normal hydraulic conditions, the needs of irrigation, the utilisation of hydraulic power, or the necessity of constructing other more advantageous routes for communication, a riparian State may not refuse to carry out at the request of another riparian State the works necessary for the improvement of navigability, provided that the latter State offers to pay the cost and also to bear an equitable share of the excess costs of upkeep. Nevertheless, it is understood that these works cannot be undertaken so long as the State on whose territory they are to be carried out is opposed to them on grounds of vital interests.

On this also we know M. Vallotton's opinion...

M. VALLOTTON (Switzerland; speaking in French). — ...and the reservation which we make.

The CHAIRMAN (speaking in French). — With this reservation, I will put section 4 to the vote.

Section 4 was adopted.

I will now read section 5.

In the absence of any convention to the contrary, a State which is bound to carry out the works of upkeep may be released from this obligation if, with the consent of all the co-riparian States, one or more of them undertake to carry them out in its place; as regards works for improvement, the State which is bound to carry them out will be freed from the obligation if it authorises the State which proffered the request to carry them out in its place; the carrying out of works by States other than the State territorially interested, or their participation in the cost of these works, shall be assured without prejudice, as regards the State territorially interested to its rights of control and administration in respect of these works and to the prerogatives of its sovereignty or authority over the waterway.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Is not the word *assured* too strong?

M. PIERRARD (Belgium; speaking in French). — That is an observation which has already been made by M. Perietzeano. There was much discussion on the subject in the Sub-Committee, but we did not find a better word.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — What would happen if the State were unable to assure the execution of the works?

Mr. H. O. MANCE (Great Britain). — I consider that the term affords greater protection for the State territorially concerned; it is wider than the word *executed*.

M. PIERRARD (Belgium; speaking in French). — As I understand the word *assured*, a State itself or some authority takes measures and entrusts someone else with the carrying out of the works.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — If all the members of the Committee are satisfied, then I defer to their opinion, and will leave it to the Officers of the Conference to settle the exact wording with the Drafting Committee.

The CHAIRMAN (speaking in French). — Very well.

M. VALLOTTON (Switzerland; speaking in French). — With regard to section 5, may I venture to emphasise the fact that in the opinion of the Swiss Delegation, the Treaty of Versailles being in the present circumstances the only text to be applied here, the first part of this section does not apply to the Rhine. In consequence the words *in the absence of any convention to the contrary* affect the Rhine by preventing the section in question from being invoked.

Mr. Robert HAAS (Secretary-General of the Conference; speaking in French). — I will merely observe in reply to M. Vallotton that it is not customary here to interpret treaties here, and that his declaration can only be considered as the expression of the personal opinion of one delegation.

M. VALLOTTON (Switzerland; speaking in French). — That is so; but as in my opinion texts cannot be accepted unless there is agreement between those who sign them, it would be well for us to have a ruling on the point.

The CHAIRMAN (speaking in French). — The Conference will decide. I will now read Section 7.

7. Notwithstanding the provisions of the second paragraph of the present article, a riparian State may, subject to any convention to the contrary, close a waterway to navigation either wholly or in part, provided that a riparian State or all the States represented on the International Commission, if one exists, consent to this closing.

As an exception, a navigable waterway of international concern for which no International Commission exists may be closed by one of the riparian States if the navigation of it is inconsiderable and if this State is justified by the fact that its economic interest is obviously greater than that of navigation. In this case the closing may take place when notice of such action is given one year previously and subject to an appeal on the part of another riparian State under the conditions laid down in Article 19. If necessary, the decision will prescribe the conditions under which the closing shall be carried out.

Mr. H. O. MANCE (Great Britain; speaking in French). — Instead of the words in this paragraph ... *a navigable waterway of international concern for which no International Commission exists*, why not do as we did in the other articles and use the words *waterways not referred to in Article 1 (a)*?

M. VALLOTTON (Switzerland; speaking in French). — I do not wish to introduce an element of discord into the discussion, but I should like to draw the attention of the Committee to the very serious risk involved in the introduction of this principle of the closing of waterways to navigation. I would beg the authors of it to consider very seriously the consequences which it may have. The object of the Convention is to give to States which have no other access to the sea the possibility of acquiring facilities equivalent to those possessed by a maritime State on the sea. Suppose a land-locked State, situated on the Rhine, to have incurred an expenditure of ten million francs for a single port. As a matter of fact the last paragraph would not apply to this example, because there is an International Commission; I use it only as a hypothesis. What would be the position of this State—particularly when it is a small one,—if, acting on the conditions existing at the time, it has made a considerable outlay, and if, after a few years, the other States can, as laid down here, denounce the Convention, or, still more, if, while the Convention is in force, the river is declared closed to navigation,—for example, if there were a slump in water transport like that which has already occurred on the Rhine, where navigation was completely destroyed by the railways? This is a risk which we ought not to ignore if we are desirous of accomplishing good work for the future, and I beg the Committee to reflect upon the danger.

The CHAIRMAN (speaking in French). — The Sub-Committee has already deliberated at length on the subject. I am now going to request the Committee to give a decision on Section 7.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I wish to speak in order to go back to the request which General Mance made just now, when he remarked that in the second paragraph of Section 7 the words occur : *a navigable waterway of international concern for which no International Commission exists*, whereas in other articles we say simply *not referred to in Article 1 (a)*. There is no objection to carrying out this proposal and referring to Article 1 (a),—on condition, of course, that Article 1 (a) is adopted.

The CHAIRMAN (speaking in French). — Are there no further remarks?

Section 7 was adopted.

I will now read Section 8.

8. Should access to the sea be afforded by a navigable waterway of international concern with several branches, situated in the territories of one and the same State, the provisions of paragraphs 2, 3 and 4 of this article shall apply only to the branch or branches considered necessary to give full access to the sea.

Section 8 was adopted.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I should like to clear up a misunderstanding which arose at the beginning of the meeting on the subject of Section 1. General Mance was quite right in proposing that the definition of a riparian State, which is to be found there, should apply throughout the Convention (1); otherwise serious difficulties might arise even if only in connection with international commissions. If the word *riparian*, as defined, is not made applicable to the whole of the Convention, the fact of its only being defined in one article might provide an argument for concluding that the definition there given does not apply in the other articles, in particular, in the connection which I have just cited. I think, therefore, that it would serve a useful purpose to insert the following words at the end of Article 1, or in any other place selected by the Drafting Committee : *in the application of this Convention all the riparians of a navigable waterway of international concern and of its tributaries of international concern shall be considered as riparians*. This could be added after the definition of international waterways.

Mr. H. O. MANCE (Great Britain; speaking in French). — I am quite in agreement, and I consider that the reasons adduced by M. Haas are still more convincing than those which I myself gave.

The CHAIRMAN (speaking in French). — It is proposed by General Mance to transfer the first section of Article 9 to the end of Article 1, and to make it read as follows :—

In the application of this Convention all the riparians of a navigable waterway of international concern and of its tributaries of international concern shall be considered as riparians.

Unless there are any objections, the proposal is adopted.

DISCUSSION OF ARTICLE 1 (a)

We now pass to Article 1 (a) (2).

We much regret the absence of M. Alvarez, but his opinion on the subject is known to us.

(1) See p. 291.

(2) See p. 248.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I propose that Article 1 (a) should be omitted; it introduces a classification which I consider unnecessary. The Convention is built up in such a manner that the necessity for establishing two categories is nowhere apparent. If, however, General Mance and the Rapporteur desire to retain the article, I will not press the point.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — It appears to me better to retain the classification, because it is provided in paragraph (b) that, in certain cases unknown to us at present, a State may, by means of a unilateral agreement, place in this category rivers administered by international commissions, upon which States other than riparian States are not represented. We should therefore not obtain the same result by omitting Article 1 (a) and substituting for it in Articles 4 and 9 the words *rivers for which there are international commissions upon which States other than riparian States are represented*.

With regard to the obligations and rights stipulated in the present Convention, the decision will be the same; but for such cases—of which there are as yet, incidentally, no examples—it would be better from the point of view of convenience in the wording to retain this category.

M. HOSTIE (speaking in French). — May I be allowed to make an observation in connection with the wording? Article 11 also mentioned commissions upon which non-riparians are represented. There is also another article, the result of an amendment on the subject of haulage proposed by the Polish Delegation, which speaks of international commissions which include representatives of non-riparian States. There ought to be a reference to Article 1 (a) in both these articles, and the enumeration in Article 1 (a) ought to include all four articles.

The CHAIRMAN (speaking in French). — If there are no objections Article 1 (a) is adopted.

We now pass to Article 4.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — Article 4 states that :

A riparian State situated on a natural system of navigable waterways of international concern is entitled to reserve... A State which does not make use of these powers...

I propose that in both sentences the word *right* should be substituted.

M. KRBEC (Czecho-Slovakia; speaking in French). — Article 4 was only adopted provisionally, and must remain so until the jurists have replied to certain questions. We reserve the right to discuss the question in full Conference.

The CHAIRMAN (speaking in French). — The alteration proposed by M. Montarroyos is referred to the Drafting Committee.

AMENDMENT BY FRENCH DELEGATION TO ARTICLE 10

The CHAIRMAN (speaking in French).— We will now deal with the proposal made by the French Delegation. I consider it most regrettable that no member of the French Delegation should be present when a proposal by that Delegation is on the agenda.

M. PIERRARD (Belgium; speaking in French). — M. Detœuf was urgently recalled to Paris.

The CHAIRMAN (speaking in French). — I am told that General Mance consents to explain the views of the French Delegation, which at the eleventh hour has proposed some important additions.

The French Delegation proposes in the first place the following amendment to Article 10 :—

After the words in the first sentence *special agreements or treaties*, add the words *and especially in any existing conventions relating to customs measures, to police and to sanitary precautions*.

Mr. H. O. MANCE (Great Britain; speaking in French). — In the absence of M. Detœuf, may I be allowed to explain that this classification is intended to meet a special case, that of Indo-China. I do not suppose the Chinese Delegate will have any objection to accepting it.

M. TSANG-OU (China; speaking in French). — I do not raise any objection.

The CHAIRMAN (speaking in French).— Why is the addition necessary?

M. TSANG-OU (China; speaking in French). — In order to define the scope of the words *special... treaties*.

The CHAIRMAN (speaking in French). — “Special treaties” includes customs conventions.

M. VALLOTTON (Switzerland; speaking in French). — I do not see why it is desired to include this case specially and not others. The addition is calculated rather to detract from the reservation.

Mr. H. O. MANCE (Great Britain; speaking in French). — I assure you that you can accept it. The change is not one of very great importance; but the French Colonial Administration desires to add this more detailed description, which in no way prejudices existing conventions.

M. TSANG-OU (China; speaking in French). — It is regrettable that M. Detœuf should not be present; but it would perhaps not be seemly that in the absence of any member of the French Delegation the amendment should be rejected.

The CHAIRMAN (speaking in French). — If there is no objection the amendment is adopted.

NEW ARTICLES PROPOSED BY FRENCH DELEGATION

The CHAIRMAN (speaking in French). — We now come to two new articles proposed by the French Delegation. I will read the first.

1. Treaties, conventions and agreements concluded between the Contracting States in respect of navigable waterways before the date on which the present Convention comes into force, are not abrogated as a result of such coming into force with regard to the States signatories of the above-mentioned treaties, conventions and agreements.

Nevertheless, the Contracting States undertake not to apply, in a sense contrary to the regulations laid down by the present Convention, such of the provisions of the above-mentioned treaties, conventions and agreements as would be in conflict with those regulations.

2. Financial obligations undertaken by one of the Contracting States towards another Contracting State, in pursuance of Article 9, Section 4 of the present Convention, remain valid even if the State which has undertaken them should denounce the present Convention, unless an agreement to the contrary has been made with the creditor State.

The second one reads as follows :—

The provisions of the present Convention are not applicable on waterways of international concern, if one or more of the riparian States have not participated in the present

Convention, except in so far as, owing to the fact that the said riparian States are non-Contracting States, the obligations assumed by each of the Contracting States do not exceed the obligations which it would have assumed if all the riparian States had been Contracting States under the present Convention.

General Mance, Delegate of Great Britain, will now speak on the first of these articles.

Mr. H. O. MANCE (Great Britain; speaking in French). — In the absence of M. Detœuf I will indicate his intentions in this matter, and I hope that M. Vallotton will be constrained to accept them. We have several times discussed the question as to what would happen if a general convention came to be denounced. It was never our intention in concluding a general convention to abolish all existing treaties. If the Convention is denounced, previous treaties must remain in force. That is, I believe, the intention of the French Delegation. Their article has a general scope, and is not put up in opposition to the Polish Delegation. The second paragraph is necessary in order that treaties may not constitute an obstacle to the application of the Convention. I may observe in passing that to the words *undertake not to apply* which occur in the second paragraph of Section 1, the words *inter se* should be added.

M. TSANG-OU (China; speaking in French). — As M. Detœuf is away, I am left without any more detailed explanation, and am therefore unable to give a definite decision on this article. If it is a question of a general article applicable to Europe, the aspect of the question changes. If it simply applies to special cases in the Far East, I should like to receive some explanation from the French Delegation; we should then be faced with the difficult problem of the relationship between previous conventions now in force and the present one when put into force. In the absence of further data, which would enable me to judge, is there any reason why an article should not be drawn up similar to the one which we inserted in the Transit Convention?

Mr. H. O. MANCE (Great Britain; speaking in French). — It would be most dangerous to insert in this place an article similar to Article 10 of the Statute on Freedom of Transit.

M. TSANG-OU (China; speaking in French). — Perhaps you are right; but in the absence of the French Delegation, I think it would be better to defer the discussion of this question until we are in possession of the necessary information on the subject.

Mr. H. O. MANCE (Great Britain; speaking in French). — If we are in agreement as to the principle of inserting this article, we had better say so at once. With regard to M. Tsang-Ou's request for further explanation, I could have an interview with M. Barrail of the French Delegation, when those of our colleagues who so desire could attend in order to avoid any further discussion in Conference.

M. PIERRARD (Belgium; speaking in French). — I should like once again to bring the Committee back from the Far East to the Rhine; I will make a parenthesis here in order to return for a moment to Article 4, on which I made some formal reservations. The second paragraph of section 1 of Article 4, paragraph 1, begins with the words:

On the navigable waterways referred to in Article 1 (a), and except when complete freedom has already been proclaimed...

This freedom was proclaimed on the Rhine by the Mannheim Convention. I asked to know whether this article was to be understood as not in any way prejudicing the existing Mannheim Convention which is to be superseded by another. I return then to the French proposal which the Chairman has read to you. We are making here a Convention which in certain respects is less liberal, generally speaking, than is that of Mannheim for the Rhine. If we adopt the amendment in its present form, without

making a formal reservation in respect of the Act of Mannheim, we shall be laying down that the Act of Mannheim holds good in respect of those of its provisions which are less liberal than the present Convention, and that it is abrogated in those of its provisions which are more liberal.

M. VALLOTTON (Switzerland; speaking in French). — Very true.

M. WINIARSKI (Poland; speaking in French). — General Mance has twice referred to the Polish Delegation by name, but we are completely disinterested in the matter, Poland having declared once for all that she considers herself as unaffected by the question. I am therefore speaking now as a jurist, and not from the Polish, but from the international point of view.

The question of the non-abrogation of previous treaties has already been raised in the Jurists' Committee (at the time when M. Vallotton's amendment was being discussed) (1). I happened to be present at that meeting, and I recollect that after a reservation had been made by the representative of Italy, and after both M. Réveillaud, representing France, and M. Perietzeano had taken part in the discussion, M. Alvarez observed that a proposal of such a nature might well introduce anarchy into international law. I agree with him. We are making a general Convention. What will happen if this Convention is denounced? There are always general rules of law to be applied, but to make a Convention according certain benefits and then to decide that the benefits of other conventions should continue to be applied if the General Convention is abrogated, would be calculated to upset all existing conceptions of law, not only those of international law but all legal axioms. The proposal may be most beneficial from certain points of view, but from the legal point of view it cannot be upheld. That is the remark I wished to make with regard to the first paragraph. With regard to the second paragraph I agree with General Mance in considering it most reasonable.

M. PETERS (Germany; speaking in French). — The German Delegation supports the formal reservation made by the Belgian Delegate, reserving the right to investigate the relationship between this article and Article 345 of the Treaty of Versailles, which states :

Nevertheless, in all cases where such agreements and regulations in force are in conflict with the provisions of Articles 332 to 337 above, or of the General Convention to be concluded, the latter provisions shall prevail.

M. VALLOTTON (Switzerland; speaking in French). — Several questions have not been touched upon by the French Delegation. The French proposal contains an idea which has been upheld by myself amongst others; it is that we cannot make *tabula rasa* of the past.

In the second paragraph we must pay careful attention to the principle which we have proposed. It is an appropriate occasion on which to ask whether we should not say *in medio veritas*. I did not desire in my amendment to supplement the text of the article. I consider the second paragraph to be an absolute contradiction of the first. A distinction must be made. With regard to freedom of navigation there is, however, equality of treatment,—in other words public regulations applicable to waterways *quâ* public ways. There we must start with a clean slate, and we shall all agree to say that the new regulations must be applied absolutely.

The question of the relations of the navigable waterway with the territorial rights of the various sovereign States, in particular with regard to works, touches upon quite another sphere, and great care must be taken as to the manner in which it is dealt with. I will take an example which I indicated in referring to the articles on the subject of the Rhine. In particular, with regard to the right of France to draw off the waters of the Rhine, there is a mutual agreement which, whilst imposing obligations on the various States, accords them corresponding rights. An attempt was made in the Treaty of Peace to arrive at a just settlement of the whole of this exceedingly

(1) See foot-note p. 294.

difficult question, subject to the question of the right of derivation upon which I will give no opinion here. If to-day, ostensibly in the interest of further public order, you introduce new regulations concerning the upkeep of works, for example, you are completely destroying the whole series of regulations which the Treaty of Peace took such pains to establish. You are here touching upon an extremely complex question of territorial rights. The second paragraph of the French proposal is too bold for me to be able to accept it. It is impossible to lay down in a general fashion that new regulations shall come into force, except those relating to freedom of navigation; the rights of States and their obligations as riparians is another question, which is not solved by any of the texts presented to us. It is for this reason that I decline to discuss the question further before being better informed as to the present position.

M. TSANG-OU (China; speaking in French). — Regarding the application to China of the French amendment to Article 10, are the terms of existing treaties to be extended?

The CHAIRMAN (speaking in French). — There is no question of extending them, on'y of detailing them more exactly, and even this will probably be superfluous. We must in any case wait until the French Delegation is present. We could meet this evening at the Ritz Hotel in order to examine the amendment.

M. BIGNAMI (Italy; speaking in French). — We used a different term this morning, namely *treaties and conventions which exist*, and not *treaties concluded*; they might have been concluded several centuries ago.

Mr. H. O. MANCE (Great Britain; speaking in French). — The Delegations concerned might meet this evening at 10.30 in order to hear M. Barrail's explanations and to examine M. Vallotton's amendment.

NEW ARTICLES PROPOSED BY CHINESE DELEGATE AND BY DELEGATE OF INDIA

The CHAIRMAN (speaking in French). — The next item on the agenda is the examination of the two special articles concerning India and Eastern Asia. A text has been adopted by the Sub-Committee, and reads as follows :

A national navigable waterway shall not be considered as of international concern from the sole fact that it crosses or delimits zones or enclaves of a very small extent and population as compared with those of the territories crossed, and which form detached parts or settlements belonging to a State other than that to which the said river belongs, save for this exception, throughout the whole of its navigable course.

This has reference to certain special cases in India.

The following is the text of the second article, which meets the requirements of the Chinese Delegate :

The present Convention shall not be applicable to a navigable waterway of international concern having only two riparians, which separates for a great part of its course a Contracting State from a non-Contracting State whose Government is not recognised by the former at the time of the signature of the present Convention, until an agreement has been concluded between the two, establishing for the waterway in question an administrative and customs regime which gives satisfactory security to the Contracting State.

Unless there are any objections, both these articles are adopted.

STATEMENT BY CHINESE DELEGATION

M. TSANG-OU (China; speaking in French). — I have asked leave to speak in order to draw attention to the fact that there remains yet another question to be settled. At the outset of the Conference, at the beginning of the labours of this

Committee, I submitted a certain number of amendments (1). After having studied them, the Officers of the Conference informed me that as they had reference rather to special cases and special difficulties, it would be better to wait until the end of our labours in order to discuss them. By the article which we have just adopted we have removed the most important difficulty,—that concerning the Amur. I made certain observations when Articles 7, 8 and 17 were being discussed, but the difficulties in question were not of a technical order; diplomatic negotiation was necessary in order to solve them. It is for this reason that I have drawn up a statement setting forth that the Chinese Delegation opposes the voting of the principle contained in these three articles, and calling attention to the difficulties presented by them. I beg those Delegations whose Governments possess interests in China to be good enough to support the inclusion of the following Statement in the Report :

The Chinese Delegation begs the Conference to be good enough to record its reservation with regard to the application of Articles 7, 8 and 17 of the Convention on International Waterways. In view of the existence in China of special regimes on certain waterways and in certain ports, until these regimes have been revised in concert with the States concerned; in spite of China's desire for agreement, it will be physically impossible for her, in applying the new Convention, to respect the principle of freedom and equality as defined in Articles 2 and 3.

The Chinese Delegation expresses the hope that, with the spirit of mutual goodwill which is certainly manifested by the Powers concerned in carrying out the necessary revision, these difficulties, which are of a purely temporary nature, may be smoothly and rapidly overcome.

The object of the last phrase is to make it clear that, while agreeing with the principle of the Convention, we make reservations with regard to the three articles in question, which we cannot accept before receiving instructions from Peking and before drawing attention to the matter on the part of those Delegates whose Governments possess interests in China.

The CHAIRMAN (speaking in French). — These reservations will be given a place in the records of the meeting.

M. TSANG-OU (China; speaking in French). — I will make a special appeal to the Rapporteur to consent to include the Statement in his Report.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — Is it right for a Statement of this kind to be included in the Report?

M. TSANG-OU (China; speaking in French). — Yes, in the general Report; on account of its importance and in order that the attention of every Government which possesses interests in China may be drawn to it.

Mr. H. O. MANCE (Great Britain; speaking in French). — I think the Committee can agree to insert the Statement of the Chinese Delegation in the general Report; I fully understand the motives which prompted M. Tsang-Ou to make it. I suggest only an addition to the effect that the Statement was inserted subject to a report by the jurists. The Committee may remember that a statement of the same kind was made in connection with the Transit Convention, and that it was referred to the Jurists' Committee (2).

M. TSANG-OU (China; speaking in French). — In making this Statement I wish to lay stress upon the fact that I am not opposing the principles contained in the Convention; I only consider that certain difficulties will be encountered in applying it. Accordingly, while we are all met together here, including a dozen or so delegations possessing considerable interests in China, I desire to draw their attention to these difficulties in order that they may note them in the reports which they make to their

(1) See pp. 55, 56 and 104.

(2) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 195.

Governments. I accept General Mance's suggestion that my Statement should be transmitted to the Jurists' Committee.

For a river of common concern,—for the Amur,—the difficulty is met by a new article, which in the absence of the Russian Government represents a temporary settlement; but for the frontier rivers between Japan and China or between China and Tonkin and Burma, diplomatic obstacles may arise against which it will be well to provide here. It is for this reason that I have taken the liberty of drawing the attention of the Committee to these questions.

The CHAIRMAN (speaking in French). — What is the view taken by the Committee?

M. PIERRARD (Belgium; speaking in French). — I believe that we can give satisfaction to M. Tsang-Ou.

M. TSANG-OU (China; speaking in French). — Will the Committee note that it is in the hope of seeing the Conventions applied that I am endeavouring to convince it of the difficulties encountered by my country?

Mr. H. O. MANCE (Great Britain; speaking in French). — Subject to the report by the Jurists' Committee, we can approve the inclusion of M. Tsang-Ou's Statement in the Report. The matter certainly calls for reflection.

M. WINIARSKI (Poland; speaking in French). — Surely we are all agreed to approve the insertion of this Statement in the Report. It is for the Jurists' Committee to measure the importance of the difficulties which have been brought to our notice.

M. TSANG-OU (China; speaking in French). — Does the ratification of the Convention on Navigable Waterways also involve the opening of closed ports to foreign trade? You are aware that in China there are *closed ports* and *open ports*. If the ratification does not necessitate new ports being thrown open, the difficulty becomes negligible; but if new ports have to be opened the difficulties are increased. However that may be, they are not insurmountable if only the various Governments will use their goodwill in order to overcome them. It is a question on which I should be pleased to hear the opinion of the Committee.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — If I understand it aright, the question is whether the bringing into force of the Convention will have as a result the opening of new Chinese ports...

M. TSANG-OU (China; speaking in French). — I have used the term *new ports*; as a matter of fact they are ports which already exist, but which are closed to the flags of other nations.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). -- ...these ports being situated on international waterways...

M. TSANG-OU (China; speaking in French). — That is so.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The answer is obviously in the affirmative.

M. TSANG-OU (China; speaking in French). — I should like the matter to be given a place either in the records of the meeting or in M. Montarroyos' Report. It is of vital interest to me. You know the position of China with regard to the Yalu in particular. There are closed ports there.

The CHAIRMAN (speaking in French). — I will ask the Committee whether it shares M. Haas' opinion.

M. WINIARSKI (Poland; speaking in French). — It would surely be difficult for the Committee to give a decision on the subject. All that we can do is to insert M. Tsang-Ou's Statement in its entirety.

M. TSANG-OU (China; speaking in French). — The use of the words *naturally accessible* and of the definitions which we have adopted would indicate that all ports are to be opened; and I assure you that this would be an innovation in China.

M. VALLOTTON (Switzerland; speaking in French). — You are quite right.

M. TSANG-OU (China; speaking in French). — For the moment we are in the realms of theory, but the Committee is aware that in practice authorisation by the Chinese Government is necessary in order to open a port.

Mr. H. O. MANCE (Great Britain; speaking in French). — Surely we are all agreed as to including M. Tsang-Ou's Statement, and passing to the next item on the agenda.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — The point is that there has not been merely a Statement; M. Tsang-Ou asked a question of the Committee and should, I think, have a reply.

The CHAIRMAN (speaking in French). — M. Tsang-Ou wishes to know whether in virtue of the coming into force of this Convention, Chinese ports, which up to now have been closed to foreign trade, are to be opened.

Mr. H. O. MANCE (Great Britain; speaking in French). — I think an affirmative answer can be given if they are situated on a river of international concern, and if they are already open to Chinese vessels engaged in international trade.

M. TSANG-OU (China; speaking in French). — But these ports are closed to foreign trade.

The CHAIRMAN (speaking in French). — The Committee is not highly versed in Far Eastern affairs, and does not therefore seem to me to be well qualified to answer this question.

M. TSANG-OU (China; speaking in French). — In China there are ports of great importance reserved to the Chinese flag. Will a foreign country, in virtue of the principle of equality of flags, have the right to come and say to China: Open this port?

M. PERIETZEANO (Roumania; speaking in French). — Certainly it will.

Sir Louis KERSHAW (India). — It seems to me that the question is one for the Chinese Government. If the Chinese Government ratifies the Convention, it is for itself to interpret it. If any other State objects to that interpretation, it becomes a dispute, and there is machinery in the Convention for settling disputes. That is the present position; we must in the first instance interpret the Convention ourselves.

M. TSANG-OU (China; speaking in French). — How do you expect me to be able to interpret this article by myself, when the forty delegations here assembled are incapable of doing so? Really it is impossible.

M. BIGNAMI (Italy; speaking in French). — Each of us can give his opinion and that alone; it is not for us to judge. The Delegate of India has put the question most clearly. If the Chinese Government ratifies the Convention, obviously it will itself decide the attitude it should adopt. Should a dispute arise, then it must be settled by the jurisdiction provided. Speaking for myself, I think there is no doubt that if the Chinese Government signs the Convention in the conditions which you have in mind, the port is open to all trade.

M. TSANG-OU (China; speaking in French). — I do not wish the Committee to become involved in a discussion; I require simply a uniform interpretation. I have said that in my opinion the Chinese Government is obliged in this case to open the port. But I am not a lawyer, and the only way open to me after asking for a report on the subject by the jurists' Committee, is to request the other delegations to give their opinion. If the Committee considers that in virtue of Article 1 of the Transit Convention, and of the principle of equality of treatment, ports used by the Chinese flag must be opened to the commerce of all nations, I should like to be made aware of the fact in order to confirm my own interpretation.

M. PERIETZEANO (Roumania; speaking in French). — Each of us can give his opinion, but the Committee as a whole cannot express a single verdict. We are not authorised to do that.

The CHAIRMAN (speaking in French). — The Conference as a collective body cannot have an official opinion; but I think everyone here is agreed in thinking that M. Tsang-Ou's interpretation is correct.

STATEMENT BY JAPANESE DELEGATION

M. KASAMA (Japan; speaking in French). — I have a Statement with regard to the second of the two new articles which have been adopted. At the time when this article was being discussed by the Sub-Committee in connection with the Amur, the Japanese Delegation ventured in the interests of clearness to propose an addition to the second paragraph. The text read as follows :—

It is, however, understood that the above stipulation does not affect either already existing rights of third Powers arising from treaties, or diplomatic arrangements, or *de facto* situations which are already recognised.

This article, which has reference exclusively to the River Amur, does no more than exclude that river absolutely from the application of this Convention, until a Russian Government is regularly constituted and recognised by China, and until an agreement has been concluded between the two Governments to establish an administrative and customs régime affording the necessary guarantees to China. The provision does not in any way, as regards the river, affect the existing state of affairs, either between China and third Powers or between Russia and third Powers. In the opinion of the Sub-Committee, the intention of the article was simply to exclude the Amur from the international waterways régime laid down in the Convention; and consequently, neither the interests nor the rights of third parties—whether arising out of treaties or out of diplomatic agreements or from custom, nor yet situations recognised *de facto*, were in any way affected. The Sub-Committee was of the decided opinion that this view was so obviously the right one that no further stipulation was necessary, nor any explanatory text concerning the article. The Japanese Delegation declares its satisfaction with this interpretation by the Sub-Committee, and I beg to request the Chairman, on behalf of the Japanese Delegation, to be good enough to have this State ment included in the Report.

M. TSANG-OU (China; speaking in French). — I make no protest against the Japanese amendment, because discussion of questions of a diplomatic or political nature is not one of my functions here. If I asked that the River Amur might be temporarily excluded from the régime laid down in the Conventions, it was on account of the absence of any regular Russian Government. I am ignorant as to whether any rights of the Japanese Government are involved here, and it is not my duty to deal with the question in this place. My duty is to draw the attention of the Committee to the fact that in virtue of Article 1 the River Amur comes under the régime for international rivers of common concern. China is bound as regards Russia by a Convention dating from 1858. The Japanese Delegation proposes an amendment

suggesting that China is asking for the Amur to be excluded in order to derogate from rights and privileges already acquired. If the Conference deems itself competent to deal with the question of the River Amur, then I withdraw my Statement, and am ready to supply all the information with regard to the condition of affairs which might result from the application of Articles 7, 8 and 17. I would, therefore, beg the Japanese Delegation to withdraw its Statement, which involves a question of diplomacy.

M. KASAMA (Japan; speaking in French). — I did withdraw my amendment at the time of the discussion in Sub-Committee; it was merely by way of explanation that I proposed that a second paragraph should be added to this article. I have never asked the Conference to express an opinion on diplomatic questions, but merely on the interpretation of this article, which is intended to exclude the Amur temporarily from the international regime.

Admiral PRICA (Serb-Croat-Slovene State; speaking in French). — I was a member of the Sub-Committee, and as such I beg to declare that no decision was taken on the question now raised.

M. WINIARSKI (Poland; speaking in French). — The Sub-Committee was not able to give an opinion any more than the Committee; neither of them is competent in a question of this nature.

M. TSANG-OU (China; speaking in French). — I thank the Japanese Delegation for withdrawing its amendment. With regard to the Statement, I should be much obliged if a copy could be made for me which I would forward to my Government; it will then be for it to take a decision.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — The Sub-Committee was perfectly aware that it was a question of the River Amur, and did, in effect, draft an article expressly to meet the case. The Japanese Delegate, without naming the River Amur, proposed an amendment which he subsequently withdrew. Nothing else occurred. We accepted the article, but without the slightest wish to pronounce an opinion upon the matter; and the Committee is no more in a position to do so than we were in the Sub-Committee.

M. BIGNAMI (Italy; speaking in French). — I well recall the action taken in connection with the Transit Convention. We proceeded in the following manner. There was a strong feeling in favour of exceptions being provided for in the Convention for special cases. I opposed this idea; as Chairman and Rapporteur of the Sub-Committee which dealt with such cases (1) I invariably maintained the necessity of adopting an article bearing a general character, and of indicating in the Report that the article which was made to cover one particular case should apply to all similar cases. We never consented to quote particular examples which justified the exception, because everyone could then have done the same, and instead of a Convention of a general nature, we should have drawn up one for a certain number of special cases. In the Sub-Committee which dealt with India and China, for which also I was Rapporteur, we acted in the same way. We drew up two articles, one envisaging the special case of the Amur and the other that of India. It will be indicated in the Report that in both instances the Convention was not applicable, and that an article was specially drafted, it being understood that it was to be applied to all the cases which presented similar features.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — We had merely to mention in the Report that the article applied to that exception; we had not to give any interpretation. With regard to India, we say that the article had been drafted in order to meet the question of certain Indian rivers; the fact of excluding these rivers from the application of the Convention neither alters their general character,

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 186.

nor involves any change in the existing situation. With regard to the second article, we say that it applies to the Amur, but we neither explain nor interpret.

M. BIGNAMI (Italy; speaking in French). — There will probably be occasion to read the Report which I made to the Plenary Transit Committee on behalf of the Sub-Committee which dealt with the application of the Convention to colonies. This precedent having been approved, it is natural that we should follow it.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — M. Vallotton points out that the second article, for the Amur, is equally applicable to certain cases which come within his knowledge. If this is so, the article takes on a general character, and it is pointless to state that it applies in particular to the Amur. I will therefore indicate in my Report that the article was drafted to meet the case of the Amur and of any rivers showing similar conditions (1); but it is out of the question for us to enter into diplomatic interpretations here. We cannot engage in a discussion of the dispute between Japan and China on the subject of the Amur.

M. BIGNAMI (Italy; speaking in French). — And we are all fully agreed on this point.

M. KASAMA (Japan; speaking in French). — Certainly.

M. TSANG-OU (China; speaking in French). — I thank M. Kasama for withdrawing his amendment; I will remain in readiness to forward his request to my Government, but with full reservations.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I will introduce into the Report the very short statement which I have indicated, but an explanation of the dispute will not be given, and a statement will not be made with regard to the Amur.

M. BIGNAMI (Italy; speaking in French). — Certain features possessed by the river, such as its length, might be mentioned in the Report.

M. TSANG-OU (China; speaking in French). — That is unnecessary; but I should like to see included in the records the following Statement which I have drawn up on the subject of the difficulties attendant upon the application of the Convention to navigable waterways in the north of China :

This Statement has been drawn up as a result of the declaration of the Officers of the Conference at the meetings which took place on April 1st and April 7th, to the effect that the Convention on Freedom of Transit is independent of the Convention on International Waterways, and that it would be preferable to await a provisional agreement being arrived at with regard to the Convention itself in order to see whether there are really difficulties of application for China.

It should be said, in the first place, that the Chinese Delegation, faithful to the principle contained in the general statement of the Chairman of the Committee on Navigable Waterways, and moved by the spirit of conciliation which pervades the Conference, has always maintained a very reserved attitude during the discussion of the Conventions on Navigable Waterways and on Freedom of Transit, because it understands that the Convention now in course of preparation is indeed that referred to in Article 338 which is to be applied without delay to the rivers internationalised under the Treaty of Peace, and, further, in virtue of Article 23 (e) of the Covenant, and according as circumstances may permit, to the rivers of the other countries of the world. Under the terms of this article, the Members of the League of Nations undertook to *make provision to secure and maintain freedom of communications and of transit and equitable treatment...* The Chinese Delegation has therefore desired to avoid as far as possible introducing into Conventions of so general a nature amendments intended to cover particular cases arising out of the extent of the country and its ancient traditions, as also out of local economic conditions. It is for this reason that, in its amendment (2) to the Convention on Navigable Waterways, the Delegation proposed, as a general

(1) See p. 335.

(2) See p. 48.

formula, that rivers to be internationalised should be divided into two categories; it wished in this way to state its opinion that the Convention would have its full value as a *convention* when applied to rivers of general concern,—in particular the rivers expressly provided for in the Treaty of Peace,—whilst it would only have the force of a *recommendation* for rivers of common concern, such as those of China.

If China is represented at the Barcelona Conference, it is because she is particularly desirous of fulfilling her obligations as a Member of the League of Nations, and also because she is fully alive to the successful economic results which freedom of communications has achieved in Europe. Her intention, then, is to endeavour to establish at home in conformity with her policy of *rapprochement*, the same principle of freedom of international communications in such a manner that, whilst working for her own economic development, she will contribute also to the general development of closer relations between all the peoples of the world. Such has been the guiding principle of the Chinese Delegation.

Although the final wording of the text of the Convention on Navigable Waterways has not yet been decided, the general opinion of the various delegations has become manifest. It therefore seems to the Chinese Delegation advisable to point out to the assembly certain difficulties which will ensue from the adoption of this Convention, either if it is applied immediately, or when existing conventions are revised; and with this aim in view the Chinese Delegation will quote as a special example the River Amur, which separates northern China from Siberia. The Amur is well known from the point of view of its importance for navigation, and of the very active commerce which takes place upon it; there is therefore no need to enter into geographical and economic considerations, either as to the length of its navigable course, or as to its strategic importance as a frontier.

1. — *Difficulties arising from the New Conventions.* — Under the definition contained in Article 1 of the Convention on Navigable Waterways, and under the terms of the Transit Convention, the river becomes at the same time both a navigable international waterway and an important transit route. Its present status is that of a waterway not only closed to foreign flags, but forming a frontier between two countries; the security of the States concerned is given priority over every other consideration, and navigation has therefore been reserved exclusively to the Russian and Chinese flags. This was the dominating idea of the Treaty of Aigun, which was concluded in 1858 between China and Russia. We are here confronted, then, with the first difficulty,—restrictions upon navigation, as opposed to the freedom to be granted in virtue of Articles 2 and 3 of the Convention on Navigable Waterways. Further difficulties arise from the application of Article 7 on the subject of customs formalities; Article 8 concerning freedom in ports and the equality of customs tariffs; Article 9 dealing with works, and Article 19 on jurisdiction. These are only the most striking cases.

2. — *Difficulties arising from existing Conventions.* — Should China become a High Contracting Party, in addition to the serious difficulties of application which we have just noted, two other difficulties present themselves, which are not provided for by the Convention on Navigable Waterways :

a) If Russia should not become a High Contracting Party, what would then happen as regards the relations existing between the two States?

b) If Russia should become a High Contracting Party, what would be the relations between existing Conventions and the new Convention on Navigable Waterways, in view of the fact that Articles 2 and 3 appear automatically to cancel all existing Conventions, and Articles 9 and 10 to maintain them?

In view of the complex questions raised in connection with the River Amur, and in spite of the fact that the important problem of developing international traffic between Europe, America and Russia across China deserves special attention, it is quite impossible to assimilate the special conditions of this river to those which general European policy imposes on such rivers as the Danube, the Rhine and other rivers. The Danube and the Amur cannot be dealt with in the same Convention.

The Chinese Delegation, therefore, failing any alteration in our Convention, proposes that the Sub-Committee should insert in the Final Protocol the three following articles :—

1. All Chinese rivers becoming international by the definition contained in the Conventions shall be classed in the second category,—that of rivers of common concern; in this way whilst they contribute to the improvement of international relations, it may yet be possible to maintain the regional policy with regard to them;

2. Until a regular Russian Government is formed and recognised by China, and a new Treaty of Commerce concluded between the two countries, these rivers shall remain under the regime of the *status quo*;

3. As regards the rivers which form the frontier between China and Korea, and Tonkin and Burma, if these Contracting Powers express the desire, the Chinese Government may enter into negotiations with them, after the coming into force of the present Conventions, and may sign regional conventions in conformity with the principle contained in the new Convention on Navigable Waterways.

Sir Louis KERSHAW (India). — I believe the question to be quite a simple one; it is exactly analogous to that of the special article in the Transit Convention, in which

a general formula was adopted to cover certain special cases. These were mentioned in the Report (1), but the Report added that other cases could be covered by the article if two conditions were satisfied :—

1. That the geographical conditions should be identical;
2. That the States which would be affected by an exceptional régime should be in agreement on the subject. I propose that the same brief explanation should be given in the Report of this Committee.

The CHAIRMAN (speaking in French). — This will be done.

M. Kasama's Statement will be included in the records of the meeting.

M. KASAMA (Japan; speaking in French). — I should like my original proposal to be mentioned in the Report.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I will mention the proposal which the Japanese Delegation made, and which it withdrew because the text of the article was itself sufficiently clear.

ADOPTION OF PREAMBLE

The CHAIRMAN (speaking in French). — We have now to consider the question of the Preamble, and of the Additional Protocol.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — The provision which formed the subject of the second part of the Preamble has been transferred to the Additional Protocol. There only remains for examination, therefore, the first paragraph of the Preamble, concerning which I do not suppose there will be anything but unanimity. It reads as follows :

The High Contracting Parties, being desirous of applying to the waterways situated under their sovereignty or authority the principle of freedom of communications in conformity with Article 23 (e) of the Covenant of the League of Nations, do hereby enact the provisions of the present Convention concerning the régime of certain of these waterways defined below in Article 1 as being of international concern.

The CHAIRMAN (speaking in French). — As there are no objections, the text is adopted.

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The meeting adjourned at 9 p.m. (2).

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 208.

(2) The last part of the meeting was devoted to the adoption of a text concerning the Right to a Flag of States having no Sea-Coast, see p. 380.

SEVENTEENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Monday, April 18th, 1921, at 12 noon.)

DISCUSSION OF FRENCH AMENDMENT TO ARTICLE 10 — READING OF DRAFT GENERAL REPORT

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

DISCUSSION OF FRENCH AMENDMENT TO ARTICLE 10

The CHAIRMAN (speaking in French). — We will first of all very briefly consider Article 10, which we adopted in principle yesterday. An addition to this article has been proposed by the French Delegation, and M. Tsang-Ou has reserved the right to ask for an explanation on the subject.

M. TSANG-OU (China; speaking in French). — This addition to Article 10 has a general scope of application. In China there are certain special treaties, and the provision must not be considered as an extension of the rights already in existence in our country for the benefit of certain Powers.

The CHAIRMAN (speaking in French). — Then it is subject to this reservation that you accept the text?

M. TSANG-OU (China; speaking in French). — Yes.

The CHAIRMAN (speaking in French). — As the Committee is agreed, this text is adopted as almost final.

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READING OF DRAFT GENERAL REPORT

M. MONTARROYOS (Brazil, Rapporteur; speaking in French) *read his Draft Report to the Committee (See page 323).*

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The meeting adjourned at 1.55 p.m.

EIGHTEENTH MEETING OF THE COMMITTEE

ON

NAVIGABLE WATERWAYS

(Monday, April 18th, 1921, at 4 p.m.)

READING OF DRAFT GENERAL REPORT (concluded) — DISCUSSION OF TWO NEW ARTICLES PROPOSED BY FRENCH DELEGATION (contd.) — REPORT OF SUB-COMMITTEE APPOINTED TO DRAFT ADDITIONAL PROTOCOL

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

READING OF DRAFT GENERAL REPORT (Concluded)

M. MONTARROYOS (Brazil, Rapporteur; speaking in French), *concluded the reading of his Draft Report.*

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The CHAIRMAN (speaking in French). — I think that I am voicing the wishes of the Committee when I offer our Rapporteur, M. Montarroyos, our most sincere thanks for the impartial, accurate and complete manner in which he has drawn up the Report; we are all willing to accept it.

DISCUSSION OF TWO NEW ARTICLES PROPOSED BY FRENCH DELEGATION (Contd.)

We have now to consider the text of the two New Articles submitted by the French Delegation (1). Could General Mance give us some information on this subject?

Mr. H. O. MANCE (Great Britain; speaking in French). — I am in a position to give you some explanation of the two articles in question, because I was present this morning at the deliberations of the Sub-Committee which was appointed to draft them. The first paragraph of the first New Article was adopted with an alteration which consisted in changing the words *with regard to* to *as far as ... are concerned*. After a long discussion, the Sub-Committee agreed in recognising that the second paragraph of this section 1 was necessary in order to complete the first paragraph, and the following is the text upon which it agreed :

Nevertheless, the Contracting States undertake not to apply among themselves such of the provisions of the above-mentioned treaties, conventions and agreements as would be in conflict with the regulations contained in the present Statute.

Section 2 of the same article was adopted with the insertion of a reference to section 3 of Article 9 instead of section 4 of Article 9,—a change necessitated by the change in that article itself. Moreover, the word *Statute* has been substituted for *Convention*, in accordance with the general procedure adopted by the Conference during the discussion on the transit Convention.

(1) See p. 298.

As regards the second New Article, the following text was adopted by the Committee :

If on a waterway of international concern one or more of the riparian States do not take part in the present Convention, the financial obligations undertaken by each of the Contracting States in virtue of Article 9 shall not exceed those to which each would have been subject if all the riparian States had been Contracting Parties to the present Convention.

The most important change is to be found in the second paragraph of section 1 of the first article. Perhaps it will be necessary to make an addition in this sense to Article 9. In any case it will be referred to the Drafting Committee.

M. BIGNAMI (Italy; speaking in French). — It is understood that the first of the New Articles is to read : *existing treaties, conventions and agreements* and not *treaties, conventions and agreements concluded*.

The CHAIRMAN (speaking in French). — An agreement has twice been arrived at in this sense.

M. VALLOTTON (Switzerland; speaking in French). — It would be best to say *treaties, conventions and agreements already in force*.

M. HOSTIE (speaking in French). — In order to render the matter quite clear it would be sufficient to say *treaties, conventions and agreements already in force, concluded by States...*

M. TSANG-OU (China; speaking in French). — Old treaties, conventions and agreements apart from those which are compatible with the present convention, are to be maintained. This article obviously does not apply where there is no freedom of communication.

M. WINIARSKI (Poland; speaking in French). — I do not understand the meaning of the reservation in the second paragraph of the first of the two New Articles. I cannot admit this clause where two Contracting States of the present Convention are concerned.

Mr. H. O. MANCE (Great Britain; speaking in French). — I think it would be well to ask the Jurists' Committee to give us some explanation on this point in plenary meeting.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I would remind you that I had occasion, in connection with another question, to take part in the discussion which arose on this point. It was thought that an appeal should be made to M. Alvarez, who stated—I cannot remember his exact words—that he did not know of any kind of Convention which could stipulate in advance that its terms should remain in force after it had been denounced, if another Convention or contract did not intervene.

The CHAIRMAN (speaking in French). — We will put aside for a moment the consideration of this question, which appears to require elucidation.

M. BARRAIL (France; speaking in French). — I should like to point out to the Committee that in the two articles on which we are voting, only the second paragraph of the first article appears to me to require discussion, because we are at the present moment without the opinion of the legal experts. But there is the section relating to financial engagements, with regard to which I think we are all in agreement as regards both form and substance.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — As regards this section I wish to ask the French Delegate for some information. I will suppose

that one State permits another State to carry out certain works on its territory. One of the two States denounces the Convention. Is the State which has allowed these works to be carried out on its territory bound to allow work to go on even if it denounces the Convention? And if the State which denounces the Convention is the one which has undertaken to bear the cost, is it bound to fulfil its engagements until the work is completed?

M. BARRAIL (France; speaking in French). — I think that in drafting this text M. Detœuf wished to make provision for the case in which works carried out and not paid for were left as a burden on the State which wished to continue to conform to the Convention, while the other State which had allowed the works to be carried out divested itself of responsibility. The State which authorised the work should pay for it.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — If the State which allows the work to be carried out recognises the Convention, will the work be stopped or must it be continued?

Mr. H. O. MANCE (Great Britain; speaking in French). — The jurists considered that the financial aspect could not possibly be separated from that of the execution of the work, and for that reason they drafted a text which deals with the responsibility for extensive schemes for works on one particular State. Whatever happens, the work will be completed, and the mutual engagement will be carried out.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Would it not be wiser to leave financial questions outside this Convention? It is not possible to insert here a clause which is of such importance from the financial point of view; if we enter upon this path, we do not know where we shall end. The Portuguese Delegate has asked two very awkward questions, to which it seems difficult to find a reply.

M. VALLOTTON (Switzerland; speaking in French). — I am in a very peculiar position; I find myself called upon to defend a text to which I do not at all agree. You will doubtless remember that the Swiss Delegation has always been opposed to the principle laid down in this Convention of the right of a State to require other States to share in costs of upkeep. I think, however, that, in order to prevent the discussion from wandering, I must in a few words explain the position.

The text submitted to you, which is principally the work of the French Delegation, bears upon two questions. The first paragraph of the first of the New Articles deals with the question as to how far the present Convention modifies previous treaties. In the second paragraph the question is raised as to what extent the present Convention is of a public kind, that is to say, to what extent special treaties or agreements may deviate from this Convention. In my view a distinction must be made. The aim of the Convention, as intended in the Treaty of Peace, is above all to assure freedom of communications. All that is connected with this freedom—the right to a flag, equality of flags—all these terms which perpetuate the right of passage, of circulation, of transit, must be considered as of a public kind. Moreover, one article of the Convention explicitly enacts more extensive liberties than are granted under present-day law. Further, there is the whole group of inter-State Conventions, the object of which is not to state how freedom shall be exercised, but by what material means riparian States shall give the necessary facilities for navigation.

The truth is this, that if States succeed, by means of past or future treaties, in instituting a measure of freedom for navigation equal to that secured by the Convention, their agreements, if legitimate, shall remain. This is particularly true of the terms of past treaties which provide for the application of other methods of allocating costs of upkeep or improvement than those of the general Convention. This question was also discussed this morning by the Committee of Jurists, and if there are still any doubts on the point it would be better for the discussion to take place in presence of those who are defending the principle of sharing the cost. Sir Cecil Hurst could

explain the view of the jurists, and if the omission to these articles is urged, I propose to postpone the discussion of the question until he has been heard.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — Another question has been raised by the first of the two New Articles. In our colony of Zambesi a treaty exists enacting that the river shall be open to international navigation, and that the railways and roads which supplement the river (when passing rapids, for example) shall be considered as part of the river itself. I therefore ask whether, should the Convention be adopted, this navigation treaty will be affected as regards roads and railways.

The CHAIRMAN (speaking in French). — This question will be answered later.

M. WALTER (Hungary; speaking in French). — I should like the following statement to be entered in the records. I do not think that the object of the Convention is to fix terms more onerous than those of the Treaty of Peace.

It is clearly understood that the provisions of the present statute shall not impose upon Hungary obligations more onerous than those laid down by the Treaty of Trianon in connection with articles 332 and 337 of the Treaty of Versailles.

Mr. H. O. MANCE (Great Britain; speaking in French). — You are safeguarded against any unreasonable stipulation.

The CHAIRMAN (speaking in French). — This Draft Convention is a general statute for navigable waterways which should apply to every country. If therefore the provisions which we draw up happen to impose on any particular country more onerous obligations than those of the Treaty of Versailles, Trianon or any other treaty, such obligations would have to be fulfilled by the country in question.

M. WALTER (Hungary; speaking in French). — I simply ask for this statement to be inserted in the Report.

Mr. H. O. MANCE (Great Britain; speaking in French). — It would be better to insert it in the records of the meeting.

M. PERIETZEANO (Roumania; speaking in French). — We cannot refuse to have it inserted in the records.

The CHAIRMAN (speaking in French). — I will put to the vote the question of entering the Hungarian statement in the records.

This was agreed.

M. TSANG-OU (China; speaking in French). — Should the first of the New Articles proposed by the French Delegation be adopted, without calling in question the principle of the article, I should like to make the following reservation :

Section 1, paragraph 1, should not be interpreted as in any way extending the special rights enjoyed by certain Treaty Powers in virtue of existing treaties concerning navigable waterways and ports.

Paragraph 2 should only apply to ports or waterways which are already open to international commerce.

The CHAIRMAN (speaking in French). — This statement might be inserted in the records.

M. TSANG-OU (China; speaking in French). — Or in the Report.

M. BARRAIL (France; speaking in French). — In the records. The jurists must be consulted.

M. TSANG-OU (China; speaking in French). — When the question is submitted to them, my reservations must also be brought to their notice.

The CHAIRMAN (speaking in French). — It is decided to insert these reservations in the records. As M. d'Andrade has asked for an explanation, I ask M. Hostie to be so good as to reply.

M. HOSTIE (speaking in French). — If I have understood aright, the question was as follows : Does the definition of Article 1 have the effect of altering the international regime of railways which run alongside certain waterways not naturally accessible from the sea?

M. FREIRE D'ANDRADE (Portugal; speaking in French). — A Convention exists for the Zambesi, in virtue of which the roads and railways flanking the river and supplementing navigation where sandbanks or rapids exists, are considered as part of the river itself. We are thus obliged to allow to pass along these roads or railways all goods proceeding by the river, in the transport of which recourse has to be made to another route. This is contrary to paragraph (a) of the article on definition. I ask therefore whether this obligation would be removed if the Convention were adopted.

M. HOSTIE (speaking in French). — The reply is in the negative.

Mr. H. O. MANCE (Great Britain; speaking in French). — Because these stipulations are not *in conflict with* the regulations of the present statute.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — The paragraph to which I have referred states that transshipment shall take place only from vessel to vessel.

M. HOSTIE (speaking in French). — The whole object of Article 1 is to define the scope of the articles which follow. Consequently everything connected with parts of waterways or even routes not included in the definition remains under the sway of existing conventions and treaties. Moreover, even apart from this interpretation of the words *in conflict with*, there is still Article 17, which maintains greater facilities. For this double reason, therefore, the reply is in the negative.

M. FREIRE D'ANDRADE (Portugal; speaking in French). — I wished to be enlightened because transit in our colony is absolutely free.

The CHAIRMAN (speaking in French). — The question has been exhausted. We can now take a decision on the first of the New Articles proposed by the French Delegation.

Mr. H. O. MANCE (Great Britain; speaking in French). — We have considered the question, and we understand the principle of it; we can reserve consideration of it until the text drawn up by the Jurists' Committee is communicated to us in plenary meeting.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — In fact, we can reserve the question.

The CHAIRMAN (speaking in French). — Does the Committee agree to consider this question in plenary Conference when we have a text before us?

We have now to examine the second of the New Articles proposed by the French Delegation. I will ask General Mance to be so good as to read it.

M. BARRAIL (France; speaking in French). — I think that a vote might be taken on this article.

Mr. H. O. MANCE (Great Britain; speaking in French). — The text which I am about to read was adopted by the Sub-Committee at its meeting yesterday, and has been referred to the Committee of Jurists. It reads as follows :—

If on a waterway of international concern one or more of the riparian States do not take part in the present Convention, the financial obligations undertaken by each of the Contracting States in virtue of Article 9 of the present Convention shall not exceed those to which they would have been subject if all the riparian States had been Contracting Parties to the present Convention.

M. BARRAIL (France; speaking in French). — The French Delegation accepts the modification proposed by General Mance and by the Sub-Committee.

M. VALLOTTON (Switzerland; speaking in French). — The Swiss Delegation also accepts it.

THE CHAIRMAN (speaking in French). — I will put this article to the vote.

The article was adopted.

REPORT OF SUB-COMMITTEE APPOINTED TO DRAFT ADDITIONAL PROTOCOL

The CHAIRMAN (speaking in French). — We will now consider the Draft Additional Protocol.

DRAFT ADDITIONAL PROTOCOL

The States signatories of the Convention on the International Regime of Navigable Waterways, signed at Barcelona on . . . , whose duly authorised representatives have affixed their signatures to the present Protocol, hereby declare that, in addition to the Freedom of Communications which they have conceded by virtue of the Convention on Navigable Waterways considered as of international concern, they further concede, on condition of reciprocity, without prejudice to their rights of sovereignty, and in time of peace,

(a) on all navigable waterways,

(b) on all naturally navigable waterways,

which are placed under their sovereignty or authority, and which, not being considered as of international concern, are accessible to ordinary commercial navigation to and from the sea, and also in all the ports situated on these waterways, perfect equality of treatment for the subjects, property and flags of any State signatory of the said Convention as regards the transport of imports and exports without transhipment.

At the time of signing, the signatories must declare whether they accept the obligation to the full extent indicated under paragraph (a) above, or only to the more limited extent defined by paragraph (b).

It is understood that States which have accepted paragraph (a) are not bound as regards those which have accepted paragraph (b), except under the conditions resulting from the latter paragraph.

It is also understood that those States which possess a large number of ports (situated on navigable waterways) which have hitherto remained closed to international commerce, may, at the time of the signing of the present Protocol, exclude from its application one or more of the navigable waterways referred to above.

The present Protocol, the French and English texts of which shall be authentic, shall be ratified. Each Power shall send its ratification to the Secretary-General of the League of Nations, who shall cause notice of such ratification to be given to all the other signatory Powers; these ratifications shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall remain open for the signature or adherence of the States which have signed the above-mentioned Convention or have given their adherence to it.

It shall come into force after the Secretary-General of the League of Nations has received the ratification of two States, provided, however, that the said Convention has come into force by that time.

It may be denounced at any time after the expiration of a period of two years dating from the time of its coming into force. The denunciation shall not take effect until one year after it has been received by the Secretary-General of the League of Nations. A denunciation of the Convention on the International Régime of Waterways of International Concern shall be considered as including a denunciation of the present Protocol.

Done at Barcelona...

M. LELY (Netherlands, Rapporteur; speaking in French), *read his report* (1) :

M. KRBEC (Czecho-Slovakia; speaking in French). — I should like to put a question. In one of the last meetings the Italian Delegate made a remark in connection with equality of treatment as regards dues on national waterways. I should like to know whether there will result from this Protocol an engagement to accord equality of treatment in respect of this question of dues.

M. LELY (Netherlands; speaking in French). — Undoubtedly.

The CHAIRMAN (speaking in French). — I shall be very glad if the Committee would accept this Protocol; it is the result of work in which delegates from Asia, South America and Europe have taken part. It therefore represents, as it were, a world-wide opinion.

M. PERIETZEANO (Roumania; speaking in French). — I did not wish to speak in connection with this Protocol, but I cannot help saying that this question was not on the agenda of our work. Before coming here we asked our Governments for instructions regarding the questions on the agenda. We have not been able either to ask for or receive them on questions such as these.

The CHAIRMAN (speaking in French). — My reply is that it is perfectly logical for this question to come within the sphere of the Convention. It is a very small affair,—a fraction of the Preamble.

M. PERIETZEANO (Roumania; speaking in French). — I wish to state that I am not empowered to accept this text.

The CHAIRMAN (speaking in French). — I assure the Committee that it has full powers to deliberate on this Draft, which, I repeat, is only a fraction of the old Preamble. We are perfectly entitled to give our opinion; we have nothing to fear on this point.

M. LELY (Netherlands; speaking in French). — As the Chairman has said, the question before us at this moment is only part of the old Preamble. There is, however, one difference,—the Preamble was intended for signature by all the signatories of the Convention, whereas acceptance of the Protocol submitted to you is optional.

M. REINHARDT (Austria; speaking in French). — Will our vote simply mean that we agree that a draft protocol should be submitted to the Conference, or is the actual question of signing the Convention prejudged thereby?

The CHAIRMAN (speaking in French). — The two things are quite independent; I may give you a formal assurance of that. I think that the members of the Committee have given the matter sufficient reflection. I therefore ask them now, before entering the plenary Conference, to take a decision—of course of a provisional nature—on this Draft Additional Protocol.

The Draft Additional Protocol was adopted by 16 votes to 1, with 7 abstentions (2).

As the Conference is now about to deliberate on the Additional Protocol, I propose that M. Lely should become a kind of rapporteur to the plenary Conference, in order to bring to its notice the document which he has read to us. The purport of our agreement will thus be placed in a still clearer light. I am happy to be able to

(1) See p. 363.

(2) The Committee then proceeded to adopt the Report on the Declaration on the Right to a Flag of States having no Sea-coast (see p. 383).

state that the labours of the Committee on Navigable Waterways and Ports are at last terminated. I am convinced that optimism is a great power. You will remember that when I read my statement to the meeting on March 22nd, a certain pessimism was manifested by some of our colleagues. A month has now passed, with long and laborious—sometimes even painful—days and nights. I know that certain delegations even began to despair of the work which we were accomplishing, and which I may say is destined to be historic. For my own part, I preserved my optimism throughout this wave of pessimism, because I had an unshakable faith in the wisdom of the forty and more nations here assembled. Great therefore is my joy in realising that we may now appear with our heads high before the plenary Conference, which I am convinced will ratify our work, and we shall thus have justified the confidence which the League of Nations placed in us. The work at Barcelona will not have been in vain, and we may offer each other mutual congratulations.

Once more, gentlemen, I wish to thank you all from the bottom of my heart for the goodwill and the great tolerance with which you have helped me in my toilsome and difficult task, which is today so happily completed.

M. LASSALA (Spain; speaking in French). — I think that I am voicing the sentiments of all the delegations, and particularly of the Spanish Delegation, in expressing to the Chairman our gratitude for the able and impartial manner in which he has directed our labours. It is thanks to him that we have been able to complete this, the most delicate and difficult task of our Conference—the Convention on Navigable Waterways.

The meeting rose at 6.15 p.m.

PART III

REPORT OF THE COMMITTEE
TO THE CONFERENCE

DISCUSSION AND ADOPTION
OF THE
CONVENTION

ON THE

REGIME OF NAVIGABLE WATERWAYS
OF INTERNATIONAL CONCERN

TWENTY-EIGHTH MEETING OF THE CONFERENCE

(Monday, April 18th, 1921, at 6.25 p.m.)

REPORT OF COMMITTEE ON NAVIGABLE WATERWAYS — ADOPTION OF ARTICLES 1 TO 3 AND 5 TO 7

The meeting opened with M. Hanotaux, President, in the Chair (1).

REPORT OF COMMITTEE ON NAVIGABLE WATERWAYS

The PRESIDENT (speaking in French). — After the great efforts which the Committee on Navigable Waterways has made, I beg the Conference to take into consideration all the work that has already been done and to make the discussions here in Plenary Session as short as possible, in order that we may as soon as possible achieve the result which we all desire. I should also prefer such speeches as are necessary to be made by heads of delegations. We shall thus more quickly be able to crown the efforts of the Committee, of its Chairman, who has given himself heart and soul to the work entrusted to him, and of the Rapporteur, who will submit to you the results of the prodigious labours which have been accomplished. We desire to express our thanks alike to the President, to the Rapporteur and to the Committee.

M. MONTARROYOS (Brazil), Rapporteur; speaking in French). — Gentlemen, I must apologise for having kept you waiting and for not being able, at this moment, to submit a more carefully prepared Report.

The Committee appointed by the General Conference on Communications and Transit to prepare a Draft Convention on the International Régime of Navigable Waterways met at Barcelona on March 30th, in the Palace of the Mancomunidad of Catalonia. When this Committee was given its instructions, it was also supplied with a programme of work drawn up in advance. It was to follow the general course marked out for it by the Draft contained in the *Green Book*, but at the same time it was to be guided by the ideas which had been expressed by the various delegations during the debates which took place in the plenary session of the Conference on March 23rd and 24th. The Committee has consistently adhered to this dual programme, and its labours have produced a result which I think we may regard as satisfactory.

These were the labours upon which I had to report. In order to assist me in the task which it had entrusted to me, the Committee was good enough, at my request, to appoint as Assistant-Rapporteur our distinguished colleague, M. Detœuf. Thanks to the valuable assistance which he gave me, the Report was rapidly completed, in fact almost as soon as the debates in Committee.

As regards the method adopted in drawing up this statement, I thought that the best plan would be to indicate, following the numerical sequence of the articles, the most important opinions which were expressed and the declarations or interpretations which were put forward during the debates, and which induced the Committee to change, to modify, or to define more clearly the provisions of the *Green Book*. This method will also enable you to appreciate more easily the lofty and conciliatory spirit which

(1) From this meeting onwards, the text used as the basis of discussion is that of section VI of Part IV of this volume (*Text of the Statute drafted by the Drafting Committee based on the text prepared by the Committee on Navigable Waterways, and submitted to the Conference*).

inspired the Committee, and which characterises the Draft Convention which it now submits to the Conference.

PREAMBLE. -- The Preamble, which is an integral part of the Convention and which, in point of law, is inseparable from it, states the problems of which this Convention, taken as a whole, provides a solution adapted to the present needs of the world. It will be seen at once that the problem is to apply to navigable waterways a régime which will be most favourable for the expansion of international activity and the development of good relations between peoples. The Preamble, therefore, which is based on Article 23 of the Covenant of Versailles, lays down as the key-note of the Draft Convention the principle of freedom of communication on navigable waterways.

The wording of the Preamble proposed by the Committee differs from that of the *Green Book* in two essential points, as follows :—

1. You will observe, in the first place, that the present text omits the second paragraph of the original text. Let me say at once that this omission in no way implies a step backward in the path of freedom; the paragraph which has been omitted, and which only expressed a recommendation to extend the scope of the principle of freedom of communications, is replaced by a protocol forming an annex to the Convention; as a result of this the object of the recommendation may be transformed at once into a practical reality for the nations which are in favour of it.

This Protocol is, moreover, the affirmation of a principle. Adherence to it is voluntary; it thus aims at reconciling aspirations for progress with considerations of prudence. This is a wise method of preventing progress from deviating from the true path, and at the same time preventing prudence from exercising too much restraint upon progress. Moreover, the Protocol serves another purpose,—that of showing, in its full amplitude, the nature of the problem confronting us. In other words, it shows us that we shall not have arrived at the goal of our endeavours until all navigable waterways are open to the flags of all nations. It was this that the Brazilian Delegation pointed out when it defined the basis of the principle of freedom of navigation. According to the Brazilian view, which, in this domain, is opposed to the idea of servitude, freedom of navigation on rivers is merely a result of the fact that every navigable river must be regarded as the natural prolongation of the free ocean highway. It is understood that such an idea does not exclude the maintenance of the prerogatives of national sovereignty over such rivers; this sovereignty continues to be exercised in the same way as over all territorial waters. This short survey of the ideas set forth by the Brazilian representative in his speech at the plenary session of March 23rd (1) will suffice to show the significance of the Protocol which the Committee proposes to add as an annex to the Draft Convention.

2. The other difference between the old and the new texts of the Preamble is due to the substitution in the first paragraph of the words *waterways defined as of international concern* for the words *waterways defined as international*. This amendment was adopted as a result of a proposal by the Brazilian Delegation,—the only amendment, incidentally, which it proposed during the debates (2). It was only a question of reverting to the wording which the *Green Book* Commission had employed in its original text, with the object of bringing out the fact that a recognition of the international importance of a waterway in no way implies the internationalisation of its administration, but simply—in the absence of any special provision for a particular waterway—the recognition of definite international obligations with regard to its use. The Brazilian Delegation adhered to this point of view, supporting it by a number of other arguments which it considered decisive, and, finally, submitted the amendment.

Beginning with the Preamble, this amendment lays down the two basic conditions for the equitable application of the principle of freedom of communications on waterways,—namely, to guarantee, in all circumstances, both freedom of international navigation, and also the free expression of national sovereignty. It is understood that

(1) See p. 25.

(2) See footnote p. 58.

the formula *freedom of navigation*, as used here, includes all the natural and indispensable factors of that freedom, such as equality of treatment for different flags, and continuity of transport.

As regards the expression *sovereignty*, everyone knows how it is interpreted in practice; it is sufficient for us to note, among its various attributes, the rights of jurisdiction and police which are exercised by a State over its rivers. Unless we can reconcile these two conditions,—freedom of international navigation and respect for national sovereignty,—it will be impossible to reach an agreement between the nations to institute the regime which we have in view, and which is required to meet their own needs on navigable waterways. If we had called these waterways *international*, whereas they do not lose their national character as a result of their being open to all flags, we should have appeared to neglect the rights of sovereignty of the State over the integral parts of its territory which these rivers represent. That would have been a cause of serious misunderstanding. We therefore chose the more correct title of *waterways of international concern*, in place of the ambiguous appellation *international waterways*.

The care thus taken in regard to form serves all the more to overcome a difficulty of principle, because throughout the text of the Draft Convention, in every article, account has to be taken of the respective interests sometimes in conflict of freedom of navigation and the sovereignty of the State. At every step these interests have to be reconciled, and this is never impossible so long as we do not allow ourselves to be governed by ideas which are too absolute. Hence the vital importance of eliminating from the text of the Draft whatever is not inspired by a spirit of conciliation. It was with these considerations in view that the Brazilian Delegation submitted its amendment, and it was unanimously accepted. Such is the true significance of the Preamble as finally adopted for the Draft Convention.

We must here point out that the expression *authority* whenever it follows the word *sovereignty* applies, as was laid down in the *Green Book* (1), to every case (*sovereignty, protectorate, mandate, etc.*) where the State responsible for the carrying out of the Convention does not possess sovereignty over the territory across which the transit takes place. It has been found impossible to determine in advance, in every case, upon which of the signatory States the responsibility will devolve; any difficulties that may arise can be solved individually. The State responsible for a measure is the State which actually possesses the means either to bring about or to prevent its application. Where, for example, sovereignty and authority are apportioned between different States, as a result of "settlements", which would imply such a division of authority, it would be for the States concerned to agree among themselves as to the application of the present Convention.

ARTICLE 1. — *Definition.* — The definition of navigable waterways of international concern was found most difficult to determine. All the argument which had taken place when the *Green Book* was being drawn up was re-opened during the sittings of the Committee. The problem was to find a formula to include all waterways which, in spite of their differing characteristics, have this much in common, that they are of international concern. Here we were confronted with two alternative proposals—the same, it may be said, which had divided the Commission of Enquiry—a proposal for a general definition, in the true sense of the word, and a proposal for enumeration. The first method consisted in finding a comprehensive formula which would express all the common features and characteristics of a waterway of international concern. The second method was put forward in two forms,—the first, that of drawing up a list of waterways to which the international régime could be applied; the second, that of grouping these waterways in a limited number of categories. The latter method was advocated by M. Alvarez, the Chilean Delegate, and was supported by the Chinese Delegation. It recommended a classification in three groups, which were to consist firstly, of waterways of general concern, namely those under international Commissions; secondly, of waterways of less general concern and only subject to the sovereignty of the riparian States; and, finally, of waterways of individual concern. Both the systems based upon these two main points of view possess advantages and disadvantages, and it

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 286.

would be impossible, *a priori*, to strike a balance between them with a view to selecting one of them. If we adopted the method of a general definition, we might work out, on this basis, certain general principles, but these might be found in practice not to be applicable to all waterways of international concern. On the other hand, if we adopted the system of enumeration, we should have such a multiplicity of individual cases that it would be difficult to draw up general clauses, as is desirable in a Convention of the kind we are considering. These considerations perplexed our minds and threatened to render our differences more acute.

The Committee then decided to appoint a Sub-Committee in order to find the best solution, taking into account the discussions which had taken place in Committee. The Sub-Committee worked, from the outset, from the point of view of what was practicable, and proceeded by the methods best calculated to lead to a satisfactory result. On the one hand, working by the method of elimination, it endeavoured to determine the differences between navigable waterways arising from the application of certain provisions which the articles under consideration must inevitably contain. On the other hand, it endeavoured to deduce from the actual circumstances technical factors which should be both exact and comprehensive enough to enable a definition to be formed. The Sub-Committee thus adopted the method which was most likely to lead to a result. As a result of discussion, it decided to favour a general definition, instituting, however, a special category of navigable waterways which would be subject to a particular régime. The definition adopted by the Sub-Committee is based, then, on conditions of a technical order which characterise those navigable waterways which are suitable for economic exploitation in international interests. We thus see that the divergence between the two views became less marked, although that in favour of definition was accepted in its entirety, whilst that in favour of enumeration underwent a complete change, the enumeration being reduced to two single categories, as is shown in Article 1*a*.

On this subject it now only remains for us to explain the sense of the phrase *to and from the sea* contained in the first paragraph. This means that the navigable waterway is, or may be, used for the transport of passengers and goods not only to the sea from the point furthest from the sea attained by navigation, but also in the opposite direction.

Article 1.—Sub-heading a.—Details were requested, in particular by the Portuguese Delegation, on the subject of the word *transhipment*, which appears in Sub-heading *a* of Article 1. It was determined that this word referred to the passage of goods from one ship to another direct, without it being necessary to leave the waterway in order to carry out the operation. It is clear that this definition does not include transhipment which might be necessary where there are rapids or any other obstacles, the words *course, naturally navigable* being amply sufficient to prevent any mistakes on this point.

Sub-heading b.—The Committee, by introducing the words *by reason of its natural conditions* in Sub-heading *b*, had no intention of reversing the principle of the *Green Book*, expressed by the words *naturally navigable*. It only intended to define them in such a way that in no case could rivers which are only rendered navigable by genuine improvements be considered as included in this definition. For if the theory is allowed that a river common to several countries, and rendered navigable by costly improvements, becomes international on this account alone, the result would be to discourage the participating States from undertaking such improvements, and this would be directly opposed to the general interest.

Sub-heading c.—With regard to Sub-heading *c*, the Japanese Delegate proposed an amendment which would have the result of making all the tributaries of an international river come under the international régime. The Austrian Delegation supported this proposal. After having obtained a favourable vote at a sitting of the Sub-Committee, the Japanese Delegate decided to withdraw it. The Committee solved the question by adopting as an Annex a Protocol on Free Navigation.

On the other hand, the Serb-Croat-Slovene Delegation supported the view that the tributaries of navigable waterways of international concern, as also non-lateral canals,

should be treated in accordance with the fundamental principle contained in Article 331 of the Treaty of Versailles.

The Persian Delegate supported the Japanese amendment to Article 1, the object of which, as I have said, was to assimilate naturally navigable tributaries to international waterways. In this connection the Persian Representative cited the case of the Shatt-el-Arab, which is formed by the Tigris and Euphrates. Persia is a riparian State of the Shatt-el-Arab from the Persian Gulf as far as Mohammareh. The waterway is suitable for deep draught vessels, and bears the same name as far as its junction with the Tigris and Euphrates, of which its course above the Persian frontier is formed. Neither the Tigris nor the Euphrates is its main stream, nor is either a tributary of the other. On the other hand, the Tigris and the Shatt-el-Arab together form one single waterway, which answers to the description of a river of international concern.

Sub-heading d. — Sub-heading *d* states that *lateral canals which have been constructed in order to remedy defects of a waterway included in the above definition, are assimilated thereto.* — The Italian Delegation points out that the following should not be considered as parts of a navigable waterway of international concern : Canals constructed with the object of linking the downstream portion of a navigable waterway (in conformity with Article 1) with the upstream portion of the same waterway, which may also be naturally navigable (again as above) but separated from the downstream portion by a portion which is not navigable. On this point, we request you to insert the following communication from Professor Carlo Valentini, of the Italian Delegation :

The most important hydro-technical factors in solving problems concerning the possible navigability of a stream are *the volume of water* and *the gradient*. If the volume of water at low water is small, and if the gradient exceeds a certain limit for a long distance, there is no longer any economic profit in improving the river either by regularising or by canalising it; owing to the cost of the work, it is preferable, instead of improving the river, to establish a navigable canal entirely independent of the river. In these circumstances, it is clear that canals such as this cannot be included amongst lateral canals. They constitute an artificial navigable waterway, over which the natural conditions of the disused river exercise no influence.

The lateral canals referred to in Article 1, paragraph 1, sub-heading *d*, are, therefore, only those canals laid down beside the bed of the stream in order to remedy an imperfection in the river,—for example, rapids, junction with a tributary, or some other obstacle which prevents navigation for a limited distance, but which is insignificant enough for it to be advantageous to utilise the bed of the river for navigation.

Certain objections with regard to sub-headings *b* and *c* of this article were raised by the Swiss Delegation.

An examination of Article 1 as a whole will show that it is essentially an adaptation of the fundamental ideas contained in the *Green Book*. For this reason it would be advisable that, in accordance with the Committee's recommendation, the *Green Book* Draft (1) should be added to this Report.

The first paragraph, then, defines navigable waterways of international concern.

The second paragraph, like that in the *Green Book*, provides an opportunity of adding to the first waterways all other natural or artificial waterways recognised as being of international concern, either by a unilateral act or by Convention.

ARTICLE 1 *a*). — After long discussion, the Committee considered it desirable to draw up a new article, Article 1 *a*), to define the special category of navigable waterways of international concern, to which reference was made in connection with Article 1.

During the discussion on this Article 1 *a*), the Lithuanian Delegate made a declaration on the subject of the Niemen, in which he was supported by the Polish Delegate.

This declaration reads as follows :—

According to Article 1 *a*) of the Draft Convention submitted by the Sub-Committee, the following form a special category of navigable waterways of international concern in respect of the application of Article 4 and Article 9 of the present Convention :—

a) Navigable waterways for which there are international Commissions upon which non-riparian States are represented.

The river with which Lithuania is chiefly concerned is the Niemen. In Article 331 of the Treaty of Peace of Versailles this river is declared to be international from Grodno; but it is only fair to point out that the Niemen, in the whole of its navigable part—that is to say from Grodno to the sea—crosses Lithuanian territory, where it is considered as a national river, and that it only forms a frontier between two States in its lower reaches over a distance of 112 kilometres.

On the occasion of a speech by one of the Swiss Delegates, the Conference laid down, in Article 2 of the Convention on Freedom of Transit, that the Treaty of Versailles was only binding upon signatory or beneficiary States. As Lithuania was not a signatory of the Treaty of Versailles, and did not give her assent to the internationalisation of the river Niemen, she cannot consider herself bound by any but the provisions of the present Convention, in which she has been invited to take part. Moreover, the international Commission for the Niemen has not been formed.

The Lithuanian Government therefore considers that it is in perfect conformity with the provisions of the present Convention if, when carrying out this Convention, it considers the Niemen as belonging to the category of waterways referred to in Article 1 and not in Article 1 a) of the Convention.

The Serb-Croat-Slovene Delegation asked for the omission of Article 1 a) as being undesirable and unnecessary, and pointed out, on the one hand, that the second sub-heading b), could be added to the end of Article 1,—which would render the drawing up of a special article superfluous—and on the other hand, that the first sub-heading (a) involved a certain element of danger, as it appeared to advocate the upholding of treaties; this would be unsatisfactory for a general Convention, more particularly as, in view of the fact that the definition in Article 1 covers all cases, it is superfluous.

As a measure of conciliation, the Serb-Croat-Slovene Delegate withdrew his proposal, and after some discussion Article 1 a) was adopted.

ARTICLE 2. — *Free exercise of navigation.* — This article was adopted without modification.

ARTICLE 3. — *Equality of treatment.* — Article 3 excludes most-favoured-nation treatment; whereas Article 15, which supplements Article 3, lays down that no non-Contracting State may receive more favourable treatment than each of the Contracting States (1).

(1) The text of the title of Article 3 is the result of the following discussion, which took place at the seventeenth meeting of the Waterways Committee, during the reading of the Draft Report of M. Montarroyos.

“M. MONTARROYOS (Brazil, Rapporteur; speaking in French) :

“ARTICLE 3. *Equality of Treatment.* — It has been pointed out that no difference in treatment may be made either on account of the point of departure or destination of goods, or of the direction of the traffic. The Committee considered that this addition rendered the idea clearer, whilst at the same time not interfering in any way with the commercial regime of the countries concerned. It became evident from the discussion that the words *in the practice of such navigation* mean that the customs or commercial régime of the countries concerned cannot enter into the question here, but only the conditions of navigation, such as orders to pass through locks, permission to moor, tolls and any customary dues, and so on.

“M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Are we to understand from this that more favourable treatment is after all possible?

“M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — Most-favoured-nation treatment is not laid down in this article.

“M. BARRAIL (France; speaking in French). — The words *may not be treated more favourably* were introduced here in order to justify the actual title of the article,—*Equality of treatment.*

“M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Why should we speak of a clause which is not included in the Convention?

“M. BARRAIL (France; speaking in French). — I think that, speaking generally, and not only of navigable waterways but of all other routes, the most-favoured-nation clause has for some time past been in a very bad way.

“M. HOSTIE (speaking in French). — It may be mentioned that the most-favoured-nation was not referred to because that was considered superfluous.

“M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — It would be better not to speak of it because, if we do, we may give rise to the belief that it is possible to obtain different treatment by means of treaties. It is as if we were to say:—Vessels of war are not included in the

Moreover, the provision regarding the flags of land-locked States has been retained, (although it duplicates the text of the Draft Convention on the Right to a Flag of States having no sea-coast (Annex 3 *a* of the *Green Book*) [1]) in order to assure for the States concerned the benefit of this provision on navigable waterways of international concern, should it not be possible, for any reason, to adopt the more general Convention laid down in Annex 3 *a*. Should this Convention be adopted, the stipulation regarding the flags of land-locked States may, without difficulty, be omitted in the Convention on Navigable Waterways.

ARTICLE 4. — This article gave rise to long discussions for several days; after various alternatives had been proposed, an agreement was arrived at between the advocates of the opposing theories.

The text adopted is thus a compromise. It was with regard to this article, of which the *Green Book* already offers us a suggestive statement, that the discussion was resumed on the subject of the application of the Convention to local transport.

Convention. That might give rise to the belief that we do not exclude the possibility of admitting them in some régime.

" M. von POCHHAMMER (Germany; speaking in French). — It was M. Haas who pointed out that most-favoured-nation treatment had to be provided for because Article 15 of the *Green Book* bars treatment of this kind.

" M. Robert HAAS (Secretary-General of the Conference; speaking in French). — As regards the substance of the question, the meaning of the Convention is not in doubt, and the changes themselves that have been made in Article 15 as the result of various comments—one of which was offered by M. Seeliger—make the question perfectly clear.

" M. MONTARROYOS (Brazil; speaking in French). — This article does not provide most-favoured-nation treatment, but only equality of treatment; Article 11 already provides that a non-contracting State may never receive more favourable treatment than any Contracting State.

" M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I fully understand M. Medina's objection. Perhaps it would be better to say *the Convention in no way provides for a most-favoured-nation régime. On the contrary it provides...*

" M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Why should we not simply say *the Convention excludes most-favoured-nation treatment*?

" M. BARRAIL (France; speaking in French). — That is what Article 15 says.

" M. Robert HAAS (Secretary-General of the Conference; speaking in French). — We might put *the Convention does not provide most-favoured-nation treatment*.

" M. BARRAIL (France; speaking in French). — Article 15 says : *Each of the Contracting States undertakes not to grant either by agreement or in any other way...* Perhaps that might satisfy M. Fernandez y Medina?

" M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — Why should we provide for something which should not exist?

" M. BARRAIL (France; speaking in French). — We might say *most-favoured-nation treatment had not to be provided for in this article, as Article 15 already lays down that no State...*

" M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — The whole Convention excludes the possibility of any kind of preferential treatment.

" M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — Will you accept the following wording : *most-favoured-nation treatment is excluded from this article...*?

" M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — And from the whole Convention.

" M. PIERRARD (Belgium; speaking in French). — Why do you say *is excluded*? You have not to indicate what is excluded from the article. It would be better to say *is not referred to*.

" M. BARRAIL (France; speaking in French). — I propose that these five lines be omitted. I realise that the Rapporteur wishes to reproduce the features of the discussion in Committee; but if we are at variance, it would be better to omit the passage.

" M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — The question was raised in Committee, but no statement was made to the effect that the Convention excludes most-favoured-nation treatment.

" M. BARRAIL (France; speaking in French). — I propose the following wording :—*Article 3 excludes most-favoured-nation treatment; whereas Article 15, which supplements it, lays down that no non-Contracting State...* This is a simple statement of two facts, and I think it will satisfy everybody.

" M. MONTARROYOS (Brazil; speaking in French). — Then I will alter the Report and say *Article 3 excludes most-favoured-nation treatment.*"

(1) See p. 461.

All the arguments already indicated in the *Green Book* were reproduced during the discussions which took place during those days. There is no need to recall the many aspects of these debates. The various delegations, which at first were divided between the two opposite principles of reservation or freedom of local transport, finally adopted the system—a compromise—upon which this article is based. The South American delegations took the opportunity of stating their view with regard to local transport, and urged in particular that the reservation made by their Governments in this respect in no way prejudices the general principle of freedom of international navigation, which is the principal object of the Draft Convention. Local transport, which only applies to transport between the ports of one and the same State, may remain outside the scope of this Draft Convention, because such a reservation does not prevent freedom of transport between the ports of different States. Moreover, in this question, we must not forget the difference between commercial operations, properly so-called, and those which concern navigation. The Delegations of Poland, Roumania, the Serb-Croat-Slovene State, and Czechoslovakia in particular, stubbornly defended the reservation of local transport, and declared that they refused to accept any thought of the maintenance or re-establishment of *pre-war usages*. In any case, I am pleased to be able to state that by considerable mutual concessions, the delegations in both camps finally agreed upon the text of Article 4 as adopted by the Committee. The result of the voting at the meeting of the Committee on April 18th was as follows :

The two paragraphs of section 1 of this Article were adopted by 23 votes to 1, and section 2 by 16 votes to nil.

We have now to define some expressions used in the article :

(1) The reservation made in section 1, paragraph 2, with regard to the complete freedom established by a navigation act, refers in particular to the Mannheim Navigation Act; Articles 332 to 337 of the Treaty of Versailles and the corresponding articles of the other Treaties of Peace are not referred to (1);

(2) By *system of navigable waterways* is understood the whole of a river system and its navigable tributaries;

(3) The words *local transport* should be understood in the same way as they are defined in the *Green Book* (2),—that is to say they :—

...signify transport other than imports, exports or traffic in transit, with or without transshipment from one vessel to another, with or without unloading on to a quay, with or without warehousing *en route*. In the latter case continuity of transport is not considered to have been interrupted, whilst, on the other hand, any intermediate railway transport would constitute such an interruption. For purposes of clearness, the following three illustrations may be given :—

1. "Free" goods are transhipped in a port, then declared in consumption and, finally, are reforwarded to another port belonging to the same State; this last stage constitutes local transport.

2. Goods liable to customs duty have been "cleared" (*dédouanées*) in a port but not transhipped. Their subsequent transport to another port of the same State does not constitute local transport.

3. Goods liable to customs duty have been "cleared" and transhipped, but are covered by a through bill of lading; their subsequent transport to the port of destination does not constitute local transport.

(1) The text of this paragraph is the result of the following discussion, which took place at the Seventeenth Meeting of the Waterways Committee, during the reading of the Draft Report of the Rapporteur, M. Montarroyos :—

"M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — Further, Article 332 of the Treaty of Versailles is not referred to.

"M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — What do these last words mean ?

"M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I inserted them in response to a request made in Committee.

"M. PERIETZEANO (Roumania; speaking in French). — It was I who made the request, but I asked that it should be indicated that the whole of the terms of Articles 332 to 337 of the Treaty of Versailles and the corresponding articles in the other Treaties of Peace are not referred to.

"M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I will rectify the sentence. It now reads as follows :

"...Articles 332 to 337 of the Treaty of Versailles and the corresponding articles in the other Treaties of Peace are not referred to."

(2) See p. 428.

(4) In the present Convention, the term *flag* is applied both to vessels used for inland navigation and to sea-going vessels, and it is the flag which must show the nationality of the vessel, even if the laws of the countries concerned do not recognise the legal existence of a flag for vessels employed in inland navigation.

In view of the new text of Article 4, the Committee considered that Article 16 should be omitted.

With your permission, I will insert in my Report, at whatever place may be most suitable, the following statement, which was made by the Greek Delegation :—

In addition to the arguments which it has put forward in favour of maintaining complete freedom of navigation on navigable waterways of an international character, especially on those in respect of which a regime has long been in force by virtue of treaties, the Greek Delegation expresses the following views : it points out that the reservation of local transport rights in favour of riparian States is in flagrant contradiction with the provisions of Articles 332 to 337 of the Treaty of Versailles and of the corresponding articles in the other treaties. All these provisions were drawn up by the actual authors of the Covenant of the League of Nations, and therefore express their conception of the manner in which, according to Article 23 (c), the Conference must secure and maintain freedom of navigation.

ARTICLE 5. — *Administrative Measures.* — In this article textual changes only have been made, in particular with regard to the substitution in the French text of the words *ne dépassent pas les nécessités* for the word *raisonnable*, as the meaning of this latter word was most ambiguous.

The Committee also rejected by 21 votes to 5 the principle, which was supported by several delegations, of extending without restriction the right of each State to enact the administrative measures laid down in this article. It considered that this right could not be extended beyond what is at present the custom in each State.

ARTICLE 6. — *Charges for Services rendered.* — This article was adopted without change, the observation being made that the same rules would obviously apply to lateral canals assimilated, under the terms of Article 1, to a natural navigable waterway as to the waterway itself.

ARTICLE 7. — This article, which in the Draft bears the title *Customs Formalities*, is now entitled *Transit, Customs Formalities*. It was pointed out that its provisions apply exclusively to formalities which concern transit. It therefore appeared necessary to specify this clearly in the title. Moreover, it was pointed out that the article did not refer only to formalities in the usual sense of the word, but also to customs measures. The word *formalities*, which is accurate from a strictly technical point of view, was retained; but the addition of the word *transit* clearly indicates that the article deals with the whole of the measures concerning transit.

The beginning of the text has likewise been slightly modified in order to show the general trend of the article, and also to bring out more clearly the fact that vessels in transit are not exempted from the application of the provisions of Article 6 concerning charges, nor from the provisions of the Convention as a whole. This article, in fact, deals with special measures and charges which may be imposed, *in respect of transit*, and independent of those which may be imposed in respect of navigation.

Further, the text has undergone certain other alterations of detail, as follows :

It was found desirable to allow the possibility of substituting padlocks for customs seals, a custom which is current on certain waterways; this obviously does not prejudice freedom of communications. Supervision by a customs official does not, in a number of cases, ensure for the customs system concerned sufficient security, especially for long voyages, on which it is obvious that one customs officer cannot remain permanently on guard. The Committee therefore provided for the *custody of customs officers* instead of *custody of a customs officer*.

Moreover, the Committee desired that the number of these customs officers should be reduced to the strict minimum consonant with the needs of supervision, and clearly expressed this desire in the last line of the article, where, when speaking of the board and lodging of customs officers, it specified that the latter must be strictly *required for supervision*.

The omission of the paragraph referring to the absence of all transit dues was called for by several delegations. But they withdrew this request on the understanding that the detailed provisions of the article should apply to cases in which transit takes place without transshipment, and that the board and lodging of customs officers should be charged to the vessel.

The exception laid down in the third paragraph, allowing the carrying out of customs formalities, refers in particular to the carrying out of customs formalities on the Meuse at Eysden, on the Rhine at Lobith, and on the Drave, where this river repeatedly crosses the frontier between Yugo-Slavia and Hungary.

It has been specified that where Article 5 of the Transit Convention is in conflict with Article 7 of the Convention on Navigable Waterways, the terms of the latter article shall prevail.

The question also arose whether it would not be desirable to prescribe on certain rivers a series of regulations for the purpose of avoiding the imposition of customs formalities, but the Committee pointed out that the provisions of Article 7 and those of Article 5 allow such measures to be taken, and that it is therefore unnecessary to provide for them here. It was pointed out that in some vessels the affixing of seals or padlocks is not possible; it is obvious that in these cases the measures provided for cannot be taken, and recourse may be had either to supervision by customs officers, or to any other measures of supervision strictly required to reduce to a minimum the hindrance caused to the movement of the vessel and the charges imposed upon it.

Finally, the Committee decided not to oppose the proposal that a declaration and summary inspection may be enforced in order to ascertain the identity of goods in case of the accidental opening of the seals or padlocks, always on the understanding that such a declaration or examination may not result in delaying the journey of the vessel more than would be the case if the seals or padlocks were merely affixed as normally prescribed. This amendment was adopted by 25 votes to 4, whilst 29 votes were given in favour of the whole article.

The Delegate of China entered a reservation with regard to this article (1).

ARTICLE 8. — *Use of Ports.* — The Committee rejected, by 16 votes to 9, the proposal that dues levied under the customs régime in the ports of international rivers should be heavier than on the other frontiers of the riparian States, as it considered that this principle was contrary to that of freedom of navigation as laid down in Article 2; but, on the other hand, it admitted the right of a country to protect itself against unfair competition on the part of any shipowner systematically discriminating against the nationals of the country; this would be an exceptional eventuality, but one

(1) During the reading by M. Montarroyos (Brazil), of the Draft Report (Seventeenth meeting of the Waterways Committee) this point gave rise to the following discussion:—

“ M. KRBEK (Czecho-Slovakia; speaking in French). — I make all reservation as regards this passage in the Report, to which I shall return in plenary Conference.

“ M. PIERRARD (Belgium; speaking in French). — I myself addressed a letter to the Officers of the Conference on the day after this discussion took place. Some confusion arose. I also reserve the right to speak again on this part of the Report in plenary Conference.

“ M. MONTARROYOS (Brazil; speaking in French). — I should like to point out that I cannot take entire responsibility for this passage, which was drafted by M. Detœuf. Would it not be possible for the French Delegate to give us some explanation on this point? I was not yet Rapporteur when this question was discussed, and, consequently, I did not follow the discussion in that capacity. Although I have full confidence in our Assistant-Rapporteur, M. Detœuf, it would be better for an explanation to be given as regards that part of the work which was not done by me.

“ M. BARRAIL (France; speaking in French). — The amendment which altered the text of this Article 7 was put in by the Netherlands Delegation, or rather by the customs expert of that Delegation. At the time I was not the chief French Delegate, — I was only assistant to M. Detœuf — and I was urged at all costs to speak, because it was a customs question, and I therefore spoke in my capacity as customs expert. I stated at the time that I made all reservations, and I pleaded objections because I was afraid that the introduction of details in customs affairs might lead to difficulties in other directions. Unfortunately, my indirect warning passed unheeded. Only three speakers followed me, — the chief Delegate of the Netherlands, who yielded his place to his customs expert, the French customs expert, and the Roumanian Delegate. All three spoke in the same sense; the opposite view was not upheld by anyone. As a rule, when the same view is upheld by three Delegates, the faith of the Committee is made manifest; but as a matter of fact in all questions the pros and cons ought both to be heard. For this reason, I reminded the Committee of certain fundamental objections which had not yet come to light. Certain opinions might have been expressed

which no country could be expected to tolerate in its own ports. This wording was submitted and upheld by the Uruguayan Delegate, and reached its final form after an amendment by the British Delegation. In this connection, the Serb-Croat-Slovene Delegation supported the above view, and declared that it based its attitude on the principle that a distinction should always be made between freedom of commerce and freedom of navigation.

Apart from this addition, only three noteworthy changes were made in Article 8. One of these specified that the dues levied in the ports of a navigable waterway of international concern may not be higher than those levied at the other frontiers of the country, in accordance with the general principles of its laws,—that is to say, the nature, origin and destination of the goods should, of course, be taken into account,

from the commercial point of view, but it was not for me to do that. If certain objections have to be raised, it is for those who feel impelled to make them to consider whether they will raise them in the plenary Conference, or whether it would be better to raise them now.

“ The CHAIRMAN (speaking in French). — I think this second alternative would be better.

“ M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — This question has already been dealt with in Sub-Committee; we tried to arrive at an understanding in order to come before the Committee with a definite opinion. I think on the same grounds that it would be desirable for the Committee to arrive at an agreement before we bring the question to the plenary Conference. I am convinced that when M. Detœuf drafted this part of the Report, he held strictly to the records, because he was not Assistant-Rapporteur at that time either, and had not followed the discussion in that capacity. The apparent incompleteness of his Report in one respect is certainly due to the fact that the opposite views had not been expressed. It would thus be better for them to be brought forward now, in order that the question should be entirely cleared up before the Report is read in plenary Conference.

“ M. PIERRARD (Belgium; speaking in French). — The Rapporteur's statement is quite correct. I also thank M. Barrail for his statement, which must have been made at great cost to his feelings as a financial expert. It must have cost him the more because, as a financial expert—and as he humourously remarked one day—the financial departments of the various countries generally place more hindrances in the way of navigation than they help to remove.

“ The discussion which took place at the meeting of April 5th was somewhat confused. After the statement of M. de Vries, the meeting remained silent, and the Chairman therefore asked M. Barrail for his opinion. M. Barrail replied that if he were speaking as a financial expert, he could not but support the opinion of his colleague of the Netherlands, as customs officials in the various countries form one great international family. But he quite realised that other points of view could also be defended, particularly that of freedom of navigation. After M. Barrail's speech there was a certain agitation in the assembly. I was intending to speak against the proposal, when my attention was momentarily distracted. At the time of voting, I thought that it was a secondary proposal of M. Hostie which was being put to the vote, and I voted for it, whereas, in reality, the Chairman had put to the vote the Netherlands proposal.

“ As the discussion has returned to this point, I appeal to the Netherlands Delegation, which comes from one of the most liberal countries in regard to navigation, and I ask it to withdraw the words *subject to a summary inspection*, which were introduced at the request of its financial expert. Summary inspection has not been allowed for navigation, not only on inland waterways situated between the Scheldt and the Rhine, but also on the Rhine itself; this is a result of the Convention of Mannheim.

“ I appear to be revolting against the Customs, but I declare that I have never smuggled a cigar in the whole course of my life. Perhaps I did not wish to do so, but the chief reason is that I was brought up on the frontiers of my country, and customs officials have always since my childhood inspired me with a kind of terror. In themselves customs officials are good fellows who stroll about; but when they are animated with the professional spirit, they become terrible. They are the kind of people who suddenly rise up from behind a bush when you are idly gazing at the stars in the evening, and ask in a terrible voice if you have really nothing to declare. Then, on the pretext of seeing whether you have really anything to declare, they turn out your pockets, and I am afraid on the same pretext they will empty the holds of vessels.

“ I therefore ask the Netherlands Delegation to withdraw the words *subject to a summary inspection*. In any case it must be fully understood that these words cannot imply any restriction on rights established by the treaties which we have in mind. It must be fully understood that these words do not refer to rivers on which more extensive freedom of navigation exists.

“ M. PERIETZEANO (Roumania; speaking in French). — I supported the proposal of the Netherlands Delegation. A vote has already been taken upon it, and I am most surprised to find it brought up for discussion again. I spoke at some length at the time. I explained that without such a summary inspection, prohibited goods could be introduced. I even spoke of goods which affect the national safety, because there are certain goods which should not even pass across a country. As we are so pressed for time to-day, the Committee would not wish me to repeat all that I said on that occasion.

“ The CHAIRMAN (speaking in French). — Will the Netherlands Delegation withdraw the words *subject to a summary inspection*?

“ M. LELY (Netherlands; speaking in French). — No, I do not withdraw them.

“ M. KRBEK (Czecho-Slovakia; speaking in French). — The question was settled; a vote was taken upon it.

“ M. PIERRARD (Belgium; speaking in French). — Indeed, my intention at the beginning of this discussion was not to raise this question now, but to raise it only in the plenary meeting.”

but not the flag under which the goods are transported. From the point of view of the utilisation of navigable waterways, the establishment of a maximum figure appeared preferable to that of a compulsory equalisation with the dues levied on the other frontiers; moreover, this would be in conformity with the rule laid down in Article 17 : *Greater Facilities*. Further, the word *redevances* has been substituted for the word *charges* (1), which is more accurate; and the words *Customs dues and similar charges* have been substituted for *Customs dues, local octroi and consumption duties*, as the former wording is more comprehensive.

The Chinese Delegation made a reservation as regards the difficulties of applying this article.

ARTICLE 9. — *Works*. — This article, like Article 4, was the subject of long and animated debate. Here, again, the various tendencies which came to light when the *Green Book* was drawn up became evident, accompanied by similar shades of differing opinion. The commentary in the *Green Book* should be read in order to gain a true idea of these tendencies (2). For this reason we need only ask you to insert such portions of the debates on this article as are necessary to explain the text which was adopted. This text originally contained eight sections; the Committee finally decided to transfer elsewhere section 1, which gave a general definition of riparian States. In this Report, therefore, we will adopt the new numbering which results from this alteration.

Section 1. — With regard to this section, the German Delegation, supported by the Italian Delegation, remarked that the interests of navigation were not the only interests of which a State must take account in respect of a river. The other interests of the country may make it necessary to place certain restrictions on navigation. It is impossible to give up the construction of a bridge or the installation of a ferry necessary for the requirements of communication, because it may be a hindrance to navigation. Similarly, the laying of cables in a river-bed often involves the placing of restrictions on navigation, and it is necessary to prohibit the casting or dragging of anchors in places where cables are laid; again, when public baths are moored to the banks of a river, it may become necessary to reduce the speed of steamships.

These examples show that the words *to refrain from all measures likely to prejudice the navigability of the waterway or to reduce the facilities for navigation* should not be understood as imposing a rigid obligation on States; they must be taken *cum grano salis*.

It must be understood, therefore, that this obligation does not apply to temporary or other minor restrictions which may be imposed in the interests of the country.

Section 2. — The Portuguese Delegation raised the following question : *Does upkeep include the works necessary to repair the damage caused by a rise in the water-level or by other natural phenomena of a similar kind which may alter the conditions of navigability of the river? Or does it include only works of normal maintenance,—that is, works rendered necessary by navigation itself, or arising from normal causes?*

The Portuguese Delegation considers that the latter interpretation should be the one adopted.

Again, do the words *remove any obstructions and dangers to navigation* oblige a State to remove rapids, to dredge sandbanks, and so forth? The Portuguese Delegation does not think so. If this is to be done, it can only be with the authorisation of the riparian State, and by agreement between the parties concerned.

Section 3. — With regard to section 3, the Italian Delegation drew up the following statement :—

In addition to legitimate reasons for opposition such as, in particular, the maintenance of the normal régime of the waterways, the needs of irrigation, the utilisation of hydraulic

(1) English text unchanged.

(2) See p. 424 *et seq.*

force, or the construction of other more advantageous routes for communication, and so on; it is understood that the needs of the land as regards protection against floods, and as regards drainage, should be recognised.

The Netherlands Delegation made the following remarks on the same section :—

1. If a riparian State requests another riparian State to carry out improvements, as provided in Article 9, and offers to pay the cost, these improvements cannot be undertaken so long as the State on whose territory they are to be carried out is opposed to them on the ground of vital interests.

2. A State which, in accordance with Article 9, requests that works shall be carried out on the territory of another State shall offer to defray not only the cost of such improvements, but also an equitable share of the increase in the cost of upkeep.

3. There is no obligation upon any riparian State to cause works of any kind to be carried out on its territory by another State.

4. If a riparian State refuses to carry out on its territory works required by another State, its reasons, if based on the interests of navigation, shall be regarded as valid.

With regard to the same section, the Netherlands Delegate urged that account should be taken of the economic situation of a riparian State which is requested to undertake works for upkeep and improvement; he further urged that when works are undertaken by another riparian State which has offered to bear the expense, a previous agreement between the riparian States should in all cases be concluded in respect of the plans and conditions of such works, and the rights of control and administration in respect of them, and also that the sovereignty of the State whose territory is concerned shall continue to be respected.

In respect of section 3, the Bulgarian Delegation proposed an amendment to the following effect :—

It is highly desirable that riparian States which are neighbours, and particularly those whose frontier is formed by a navigable waterway, should conclude special mutual agreements regarding works of current upkeep and improvement, for the purpose of ascertaining the extent to which each of these States should participate technically in such works, and of ensuring that such uniform systems and methods of work should be adopted in regard to these works as are most suited to the character of the particular section of the navigable waterway.

This recommendation was accepted by the Committee.

Section 4. — With regard to this section, it should be noted that if a State which is bound to carry out works agrees with another riparian State that the latter shall carry them out, the first State shall in all cases bear the responsibility for the proper execution of such works.

The Czecho-Slovak Delegate pointed out that section 5 does not prevent the inclusion in the Navigation Act of a provision to the effect that a defaulting riparian State shall be bound to allow works for upkeep which it has not carried out itself to be carried out at its expense.

Section 5, paragraph 2 a). — In reply to a question raised by the Polish Delegate it was stated that the decisions referred to in this paragraph are administrative decisions. The Serb-Croat-Slovene Delegation considers that the powers of international rivers Commissions should as a general rule be determined (in virtue of Article 338 of the Treaty of Versailles) by our General Convention; it is further of opinion that both the decisions of these Commissions and also the Navigation Acts should in all cases be in conformity with the main principles of the present Convention.

Section 6. — The Persian Delegate pointed out that the closing to navigation of an international watercourse, as provided for in section 6 of Article 9, can only take place if all the interests concerned have been reconciled.

Finally, as regards the article as a whole, the Committee decided, in order to meet the wishes of several delegations, to insert in the report that the River Commission must conform to all the positive provisions contained in this article.

ARTICLE 10. — *Regulation of Navigation.* — An addition was made to this article, authorising the establishment of monopolised public towage and haulage services; in the interests of navigation such initiative cannot be prohibited; there are occasions indeed where it would be essential, but, in view of the dangers which the establishment of such a monopoly would involve for all the parties concerned, the Committee considered that such services could only be established by the unanimous agreement of the riparian States or the States represented on the international Commission. It is understood that a monopoly of such a kind shall only be recognised when it is rendered necessary by the technical circumstances, and required in the actual interests of navigation.

The Delegate of Norway also obtained the general assent of the Committee to the following interpretation of Article 10 in a particular case,—that of a watercourse used both for navigation and for rafting :—*The riparian States may in this case establish rules with regard to rafting, on the understanding that the national flag and foreign flags shall be treated on a footing of equality with the national flag.*

In connection with Article 10, the Committee heard M. William Martin, Delegate of the International Labour Office, who had proposed an amendment to insert in the Convention a *vœu* with regard to the standardisation of conditions of labour on international waterways. The Committee considered that the insertion of a recommendation did not come within the scope of a Convention which contained definite obligations only, and also that the Barcelona Conference was not competent to pronounce a decision on a recommendation with regard to conditions of labour, as no useful purpose would be served by considering such a recommendation in the absence of any expert on labour questions. The Committee therefore proposes to refer this recommendation to the international Commissions, requesting them to consider it as early as possible.

The Chinese Delegation stated that the French amendment to Article 10 to add after the words *special agreements or treaties* the words *and especially in any existing Conventions relating to customs measures, to police, and to sanitary precautions*, should not be interpreted as extending the special rights already possessed by the Treaty Powers in China.

ARTICLE 11. — *River Commissions.* — This article was only slightly modified; among the statutory powers of the Commissions, the duty of inspecting or causing an inspection of the river to be made periodically was abolished as being possibly, in certain cases, incompatible with the rights of sovereignty of the riparian States or with the necessity for them of safeguarding the secrets of national defence. This right of inspection thus becomes a question for which an individual solution must be found for each of the various rivers which are under Commissions.

ARTICLES 12 AND 13. — These articles were adopted without modification.

ARTICLE 14. — *Vessels of War.* — The text of this article was modified in the interests of clearness. It was considered necessary to make it clear that, subject to agreements to the contrary, the Convention does not apply to vessels exercising any kind of public authority.

ARTICLE 15. — *Relations with States not adhering to the present Convention.* — When examining this article, the Committee was impressed by the fact that the proposed text ensures the Contracting Party against the danger of more favourable contracts being granted to non-contracting Parties, but not against *de facto* conditions not resulting from written agreements, which would place the contracting Parties in a relatively unfavourable position. Moreover, the expression *licite* (1) was not considered sufficiently precise. These observations as a whole have resulted in the text submitted to you, which is both more comprehensive and more precise.

This article was adopted by 22 votes to 4.

(1) English text unchanged.

ARTICLE 15 *a*). — On the proposal of the Italian Delegation, the Committee decided to add a New Article corresponding to the article introduced into the Convention on Freedom of Transit, for the purpose of making an exception in case of emergencies affecting the safety of the State and the vital interests of a country. It is understood that the needs of national defence in time of peace are considered as emergencies affecting the vital interests of a country. Moreover, in order to allay certain misgivings, it was pointed out that it was not for one side alone to determine in what cases the new clause might be applied, and that decisions were subject to appeal; but the Contracting Party which considers itself adversely affected by the measures taken may submit such decisions to the jurisdiction provided by the Convention, which will have to give its judgment in the same conditions as those laid down in the corresponding article of the Transit Convention. We think it necessary to point out in connection with this clause that the Swiss Delegation regards it as incompatible with the protection of its vital interests, and has asked that an energetic protest against it may be entered in the present Report. In order to take into account, as far as possible, the legitimate desire expressed by this Delegation, the proposed clause contains a new restriction which does not appear in the corresponding clause in the Transit Convention. It is specially provided that communication between riparian countries and the sea shall be safeguarded as far as possible. It should be understood that, in providing for communication between a riparian country and the sea, the article also *a fortiori* provides for communication between a riparian country and the States downstream.

ARTICLE 17. — *Greater Facilities*. — This article only underwent drafting alterations. The meaning is made clear in the *Green Book* (1). A reservation was made by the Chinese Delegate in regard to the difficulties attending the application of the article.

ARTICLE 17 *a*. — *Exception in favour of the Devastated Regions*. — This article was proposed by the Serb-Croat-Slovene Delegation, and was unanimously adopted, as being entirely in accordance with the spirit of the Draft.

ARTICLE 18. — *Relationship of the Present Convention to the Peace Treaties*. — This article was drawn up in the same forms as Article 13 of the Convention on Freedom of Transit.

ARTICLE 19. — *Settlement of Disputes*. — This article was also unanimously adopted without alteration, after it had been pointed out that its terms allow the Contracting Parties to a Navigation Act in the last resort to entrust the international Commission of the waterway with the taking of such decisions as they may consider desirable, in virtue of the right granted under the said Article 19 to settle the dispute either by arbitration or in any other manner, in pursuance of a special convention or of a general arbitration clause.

ARTICLE 20. — *Consequences of Non-execution*. — The Committee proposes to delete this article, in accordance with the decision taken in Article 16, which is the corresponding article in the Convention on Freedom of Transit.

ARTICLES 21 to 27. — For the Formal Articles, the wording in the Convention on Freedom of Transit is to be adopted.

We now come to new articles.

Two articles were drawn up with a view to providing safeguards for certain special conditions. As the reasons adduced by the representatives of the States directly concerned seemed to the Committee perfectly justifiable, it unanimously adopted this article.

The first New Article makes provision for the case of certain rivers in India, which cross or mark the frontiers of the French and Portuguese settlements. It also meets the case of the rivers Si-Kiang and Tsu-Kiang in China, at the mouth of which, near the sea, is situated the Portuguese possession of Macao. The exclusion of these rivers

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 293.

from the provisions of the Convention does not alter their national character, nor does it involve any change in the present situation.

The second New Article meets the case of the river Amur, and also includes that of any other rivers the position of which is the same. On this subject the Chinese Delegation has made the following statement :—

The river Amur, the frontier between Russia and China, is closed to foreign flags by the Treaty of Aigun of 1858, navigation being reserved exclusively for the Russian and Chinese flags.

On the other hand, according to Article 1 of the Draft Convention on Navigable Waterways, the river becomes a navigable waterway of international concern. Its regime ought therefore to be modified. At present, however, as no regular Government is recognised in Russia, China thinks it should maintain the present regime as regards navigation on the Amur. For this reason the Chinese Delegation has maintained its view, the legality of which is recognised by the present article.

In the course of the discussion on the second article in Sub-Committee, the Japanese Delegate proposed the following addition :

It is, however, understood that the above stipulation concerning the Amur does not affect either already-existing rights of a third Power arising from treaties, diplomatic agreements or arrangements, or *de facto* situations which are already recognised.

As the Sub-Committee considered that the meaning of this paragraph was sufficiently clear without any such stipulation, the Japanese Delegate withdrew his amendment, and at his request the Committee decided to mention it in the Report.

The Portuguese Delegation, in agreement with the Indian and Chinese Delegations, requested the inclusion in the Report of the following statement :

The Portuguese Delegation only accepted this article when the Chinese and Indian Delegations had agreed that it in no way changed the political and commercial situation of the Portuguese Colonies in India and Macao, the Governments of which will, however, do everything in their power to improve the conditions of river navigation.

I am adding two annexes to this Report. One is the Report of the Chairman of the Sub-Committee which drew up Articles 1, 4, 9 and 16 (1). It seems to me that this addition would be useful in order to give a more complete idea of our work as a whole. The second is a declaration by the Chinese Delegate on the difficulties which would at present attend the application in his country of certain clauses in the Draft Convention. The Committee decided to insert this (2).

These, then, are the facts which appeared to me to give the best descriptive outline of our work. I feel, however, that this only gives us, so to speak, a description of the external features, and I should like to describe to you something of their inward significance. In our discussion here we have all been prompted by two kinds of motives,—those inspired by the generous impulses of international good-feeling, and those inspired by the private interests of our own countries,—worthy of recognition, no doubt, but nevertheless somewhat narrow. We are glad to be able to say that the clash of these interests did not re-act detrimentally upon the loftiest aspirations. Those who defended freedom of navigation did not forget the advantages resulting therefrom for their transport industry, and realised that those who wished to reserve local transport for their own flag were also defending another aspect of liberty,—that of retaining command over the outlets for their own activities, and over the resources necessary to the development of their national commerce. The aim on both sides was the same, and it must be admitted also that the views which triumphed were in every case the liberal ones. This is the reason why you have all given proof of such a magnificent spirit of conciliation. The Rapporteur, whose task throughout our deliberation has consisted solely in stimulating this spirit and rendering it increasingly active, is happy and proud to be able to say that his efforts have not been in vain.

(1) See p. 224.

(2) See p. 307.

THE CHAIRMAN (speaking in French). — We again thank the Rapporteur for the efforts he has made, at the cost even of his nightly repose. He could not indeed have succeeded in placing so clear, practical and complete a Report before the Conference without sacrificing some of that repose. I go so far as to think that we must spare him during the discussion, for he has really reached the limit of human possibility. I am sure the Conference will agree with me that the result which he has achieved is an excellent one, and that this remarkable piece of work has enormously facilitated the task now before the Conference of discussing and voting upon the articles submitted to us in the form of a Statute,—the form given to them by the Drafting Committee in pursuance of our decision. I will now, as usual, read the text.

ARTICLE 1

In the application of the Statute, the following are declared to be navigable waterways of international concern :

1. All parts which are naturally navigable to and from the sea of a waterway which in its course naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States.

It is understood that :

(a) Transhipment from one vessel to another is not excluded by the words *navigable to and from the sea*;

(b) Any natural waterway or part of a natural waterway is termed *naturally navigable* if now used for ordinary commercial navigation, or capable by reason of its natural conditions of being so used; by *ordinary commercial navigation* is to be understood navigation which, in view of the economic condition of the riparian countries, is commercially and normally practicable;

(c) Tributaries are to be considered as separate waterways;

(d) Lateral canals constructed in order to remedy the defects of a waterway included in the above definition are assimilated thereto;

(e) The different States separated or traversed by a navigable waterway of international concern, including its tributaries of international concern, are deemed to be riparian States.

2. Waterways or parts of waterways, whether natural or artificial, expressly declared to be placed under the regime of the General Convention on Navigable Waterways either in unilateral Acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements made with the consent of the said States.

M. MIRZA HUSSEIN KHAN ALAI (Persia; speaking in French). — I wish to make reservations with regard to the definition contained in Article 1. It is less liberal than I could have wished; for example, it does not make sufficiently clear the fact that the Tigris will be open to free navigation for the riparian States of the Shatt-el-Arab, of which it is merely the continuation. This freedom of navigation existed even under the Turkish administration, and I think that we have not come here to restrict but rather to extend the principles of freedom and equality in favour of all the Members of the League of Nations. I have no wish now to oppose the acceptance of a Convention which has cost us so much labour, but I wish to express certain reservations, because I know that my Government will not sign the Convention until it has received such assurances as would render it acceptable.

I may add that I have reason to think that satisfaction will shortly be given to Persia. When that is done I am convinced that my Government will be happy to add its signature to that of the other countries whose delegates have assembled at Barcelona.

Sir Hubert LLEWELLYN SMITH (Great Britain). — May I be allowed to say, in reply to the remark of the Persian Delegate, that I fully recognise the special interests which Persia has in the navigation of the lower Tigris? We have been in communication with the Persian Delegate, and if I have not been able to give him quite so explicit an assurance as he would desire, I ask him to believe that it is not for want of any goodwill, but on account of the special difficulties of the present situation. The Government of Mesopotamia is not yet constituted. The whole question of the navi-

gation and irrigation of the rivers there is a matter which at the present moment cannot be prejudged or removed from the competence of the Government.

I would only add, if I may, a brief suggestion to my friend the Persian Delegate. His difficulty might possibly be met by a reservation allowing the Persian Government not to ratify the Convention should he fail to obtain the satisfaction which I have every expectation he will obtain. There will be ample time between the signature and the ratification for the matter to be settled.

The PRESIDENT (speaking in French). — Both these statements will be entered in the records.

M. VALLOTTON (Switzerland; speaking in French). — You will remember the statement which I had the honour of making, on behalf of the Swiss Delegation, at the meetings of the Committee. We were obliged to enter a protest against the inclusion, in the definition of navigable waterways of international concern, of an economic element, to be subject to the will, favourable or otherwise, of one or more riparian States. We consider this element liable to lead to arbitrary decisions and international difficulties, and to be contrary to the spirit of the Covenant. The Swiss Delegation willingly shared in the labours of the Commission of Enquiry and in those of this Conference. From the very beginning of the work on the definition of navigable waterways, it has regretted that the quite adequate text of the *Green Book* was abandoned in favour of the introduction into paragraphs *b*) and *c*) of the idea of ordinary commercial navigation, which is liable to all kinds of contradictory interpretations.

When, at the beginning of the enquiry into freedom of communications and transit, the question arose of defining navigable waterways, no advance was made on previous definitions. It was recognised that the international character or the degree to which a waterway is of international concern should depend on two factors only,—the fact that the waterway crossed or divided two or more States, and the fact that it presented in itself the technical features comprised in the term *navigability*. But now this navigability depends on the existence of ordinary commercial navigation. A State which has no other means of access from the sea except a navigable waterway or a river is told :—*You are forbidden to claim navigation for all flags on this waterway and also for your own flag until you have proved, by navigating it, that the waterway is navigable.* If you will allow me to make a rather commonplace comparison, it is exactly as if a man were to say to his son :—*I will not allow you to bathe until you can swim.* We regret that, in spite of all our efforts, the Conference has persisted in taking this dangerous course. Although such memories are somewhat distant, allow me to remind you that the basis of our labours is an article of the Covenant, apparently forgotten to-day, which deals not only with freedom of communications and transit, but also with equitable treatment for commerce. Do you consider it equitable treatment for the commerce of an enslaved State to make its very life depend on a definition such as that which has been imposed upon us ? The Swiss Delegation has no wish to delay your work further; it confines itself here to expressing its protest and making reservations which it asks to have entered in the records.

The PRESIDENT (speaking in French). — M. Vallotton's observation on behalf of the Swiss Delegation will be entered in the records. Does anyone else wish to speak on Article 1 ?

Article 1 was adopted.

ARTICLE 1 a)

For the purpose of Articles 4, 9, 10 and 11 of this Statute, the following shall form a special category of navigable waterways of international concern :

(a) Navigable waterways for which there are international Commissions upon which non-riparian States are represented;

(b) Navigable waterways hereafter placed in this category either in pursuance of unilateral Acts of the States under whose sovereignty or authority they are situated, or in pursuance of agreements made with the consent, in particular, of such States.

Article 1 a) was adopted.

ARTICLE 2

Subject to the provisions contained in Articles 4 and 14, each of the Contracting States shall accord free exercise of navigation to the vessels flying the flag of any one of the other Contracting States on those parts of navigable waterways specified above which may be situated under its sovereignty or authority.

. *Article 2 was adopted.*

ARTICLE 3

In the exercise of navigation referred to above, and subject to the provisions referred to in Article 2, the nationals, property and flags of all Contracting States shall be treated in all respects on a footing of perfect equality. No distinction shall be made between the nationals, the property—based either on its point of departure or destination, or on the direction of the traffic—and the flags of the different riparian States, including the riparian State exercising sovereignty or authority over the portion of the navigable waterway in question; similarly, no distinction shall be made between the nationals, the property and the flags of riparian and non-riparian States. It is understood, in consequence, that no exclusive right of navigation shall be accorded on such navigable waterways to companies or to private persons.

With a view to the application of these provisions, Contracting States recognise the flag of vessels of any Contracting State not possessing a sea-coast when they are registered at some one specified place situated in its territory, and constituting the port of registry for such vessels.

M. REINHARDT (Austria; speaking in French). — In the interest of the clearness of the text, and in order to avoid any misunderstanding, I should like to suggest that the portion of the sentence between dashes, *based either on its point of departure or destination, or on the direction of the traffic*, should be transposed to the end of the article and should become a special paragraph, worded as follows :

No distinction shall be made in the said exercise by reason of the point of departure or of destination, or of the direction of the traffic. This paragraph would follow the first paragraph.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — We should achieve the same result by putting the words which you refer to, and which are between dashes in the text, after the words *no distinction whatever*. The passage would then read as follows :—*No distinction, based either on its point of departure...*

M. REINHARDT (Austria; speaking in French). — I think that the wording you propose would still be restrictive. The text I propose seems to me clearer.

The PRESIDENT (speaking in French). — Is there any objection to the alteration made by M. Reinhardt ? Then it is adopted.

Sir Hubert LLEWELLYN SMITH (Great Britain). — What do we intend to do as regards the last part of paragraph 3, which depends on the adoption of Annex 3 a) (1) ?

The PRESIDENT (speaking in French). — We might reserve the fate of this article until we have taken a decision on the Annex.

Sir Hubert LLEWELLYN SMITH (Great Britain). — That would satisfy me.

The PRESIDENT (speaking in French). — I will therefore put to the vote Article 3 as modified by M. Reinhardt's amendment, and with a reservation as regards the last paragraph, in accordance with Sir Hubert Llewellyn Smith's request.

Article 3 was adopted.

(1) See *Draft Convention on the Right to a Flag of States having no Sea-Coast*, p. 461.

ARTICLE 4

The CHAIRMAN (speaking in French). — I will read Article 4.

As an exception to the two preceding Articles, and in the absence of any Convention or obligation to the contrary :

1. A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its sovereignty or authority and unloaded at another port also situated under its sovereignty or authority. A State which does not reserve the above-mentioned transport to its own flag may, nevertheless, refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it.

On the navigable waterways referred to in Article 1 a), the Act of Navigation shall only allow to riparian States the right of reserving the local transport of passengers or of goods which are of national origin or are nationalised. In every case, however, in which greater freedom of navigation may have been already established in a previous Act of Navigation, this freedom shall not be reduced.

2. When a natural system of navigable waterways of international concern, which does not include waterways of the kind referred to in Article 1 a), separates or crosses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers and goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same State, in the course of a voyage effected without transshipment on the said system involving a sea-passage or passage over a navigable waterway of international concern which does not belong to the said system.

M. BARRAIL (France; speaking in French). — From the point of view of the French, the too-frequent repetition of the words *sovereignty and authority* is to be regretted, and with a view to making the text clearer, particularly at the end of the article, I would propose that the last paragraph be worded as follows :

2. When a natural system of navigable waterways of international concern, which does not include waterways of the kind referred to in Article 1 a), separates or crosses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers and goods between ports situated under their sovereignty or authority, unless this transport takes place in the course of a voyage involving a sea-passage or passage over a navigable waterway of international concern which does not belong to the said system, and carried out without transshipment in one of the above-mentioned ports, between two ports which are not situated under the sovereignty or authority of one only of these two States.

The CHAIRMAN (speaking in French). — I think it would be well to reserve this paragraph in order to enable the Chairman and Rapporteur of the Committee to give us their opinion. I propose therefore that the whole article be reserved.

ARTICLE 5

We now pass to Article 5.

Each of the Contracting States maintains its existing right on the navigable waterways or parts of navigable waterways referred to in Article 1 and situated under its sovereignty or authority to enact stipulations and to take the necessary measures for policing the territory and applying the laws and regulations relating to customs, public health, precautions against the diseases of animals and plants, emigration or immigration, and to the import or export of prohibited goods; it being understood that such stipulations and measures must be reasonable, must be applied on a footing of absolute equality between the nationals, property and flags of any one of the Contracting States, including the State which is their author, and must not without good reason impede the free exercise of navigation.

Article 5 was adopted.

ARTICLE 6

No dues of any kind may be levied anywhere on the course or at the mouth of a navigable waterway of international concern, other than dues in the nature of payment for services rendered and intended solely to cover in an equitable manner the expenses of maintaining

and improving the navigability of the waterway and its approaches, or to contribute to expenditure incurred in the interest of navigation. These dues shall be fixed in accordance with such expenses, and the tariff of dues shall be posted in the ports. These dues shall be levied in such a manner as to render unnecessary a detailed examination of the cargo except in cases of suspected fraud or infringement of regulations, and so as to facilitate international traffic as much as possible, both as regards their rates and the method of their application.

Article 6 was adopted.

ARTICLE 7

The transit of vessels and of passengers and goods on navigable waterways of international concern shall, so far as customs formalities are concerned, be governed by the conditions laid down in the Statute of Barcelona of April 14, 1921, on Freedom of Transit. Whenever transit takes place without transshipment the following additional provisions shall be applicable :

(a) When both banks of a waterway of international concern are within one and the same State, the customs formalities imposed on goods in transit after they have been declared and subjected to a summary inspection shall be limited to placing them under seal or padlock, or in the custody of customs officers.

(b) When a navigable waterway of international concern forms the frontier between two States, vessels, passengers and goods in transit shall while *en route* be exempt from any customs formality, except in cases in which there are valid reasons of a practical character for carrying out customs formalities at a place on the part of the river which forms the frontier, and this can be done without interfering with navigation facilities.

The transit of vessels, passengers and goods on navigable waterways of international concern must not give rise to the levying of any duties whatsoever, whether prohibited by the Statute of Barcelona on Freedom of Transit or authorised by Article 3 of that Statute. It is nevertheless understood that vessels in transit may be charged for the board and lodging of any customs officers who are strictly required for supervision.

M. LAMAN DE VRIES (Netherlands; speaking in French). — There is an error in the text. The Sub-Committee which examined Article 7 agreed that the last three paragraphs of the article should be considered as applying exclusively to transit without transshipment, and the text adopted by the Committee was drawn up in accordance with this view; but I see that in the new text now before us this conditions is not mentioned. I ask that the article be rectified.

M. KRBEC (Czecho-Slovakia; speaking in French). — In accordance with the reservation already made in Committee by our Delegation, I venture to propose that the words *after they have been declared and subjected to a summary inspection* in paragraph a be deleted.

The Conference will remember that Article 7 was referred to a Sub-Committee, which proposed a text practically identical with that before us, but omitting the words *after they have been declared and subjected to a summary inspection*. These words were introduced later on a proposal by the Netherlands Delegation, and they were provisionally adopted by the Committee. Several delegations, including ours, consider that they constitute a danger for the freedom of navigation. Moreover, the text which I propose is in absolute conformity with the Treaty of Peace. If, then, it is accepted by the Conference, nothing will be changed in the present conditions on international rivers regulated by the Treaty of Peace. I may add that our proposal is a compromise between the Netherlands view and that of those delegations which, like ours, fear that the addition of these words may prove a hindrance to navigation. If the Conference accepts this text, one passage in the Report will of course have to be changed, and with a view to this eventuality, I venture to propose the following text :—

By the terms of Article 7 a), a general rule is enacted, laying down the principle on which customs formalities should be carried out. This rule should not be intended to regulate the concrete details of the customs regime on each individual international waterway. Such regulations should be left to the navigation acts for which the general Convention provides a standard. Thus, for example, the regimes at present in force on the Rhine and the Rio Parana would appear to comply with the terms of this provision.

M. NEUJEAN (Belgium; speaking in French). — I earnestly support M. Krbee's observations, which bear the mark of common sense. We have already supported them on several occasions during the discussion, and we attach special importance to them. But in order not to take up any more of the time of the Conference, I will not return to the arguments which in any case have been clearly stated by the honourable Delegate.

M. PERIETZEANO (Roumania; speaking in French). — This question was discussed in Committee. It appears under two totally different aspects, according to districts. Purely summary inspection might take place at the mouth of the Scheldt, which crosses Holland over a distance of seven or eight kilometres. We all agree on this point.

M. NEUJEAN (Belgium; speaking in French). — It would be the same whatever the length.

M. PERIETZEANO (Roumania; speaking in French). — When an international river crosses any country for a short distance, we may allow that this summary inspection is unnecessary, but when a river like the Danube crosses a country such as Roumania, over a distance of three hundred kilometres, and when the two banks are situated in a marshy district, can we be content with placing cargoes under seal without even knowing of what they consist?

But I will bring forward a still stronger argument. The Transit Convention allows transit to be prevented in certain cases, when the safety of a State or the health of persons or animals is concerned, and even in other cases. How can we prevent the transit of a cargo, the contents of which we do not know? The placing under seal does not prevent transit in the case of private transport; the aim is not to levy a due, but to prevent goods from passing. Where there are hundreds of kilometres in a region which cannot constantly be watched, we cannot rest content with placing under seal. I am sorry that the Netherlands Delegate is not here, as it was he who made this proposal, and I ask the Conference to leave the text in its present form.

M. PIERRARD (Belgium; speaking in French). — I will be brief, especially as the discussion has already been exhausted in Committee. The Roumanian Delegate tells us that in countries other than his own, there are no river routes as long as those to which he refers. I reply that we have routes which will bear comparison with these. But I oppose the terms which he advocates, chiefly because they would mean a retrogression as compared with what already exists. In fact they amount to the abrogation of a state of affairs which has already existed for three-quarters of a century on our waters and those of the Netherlands; it is for this reason that we ask the Conference not to accept the insertion of the words *summary inspection*, and it is for this reason that I second the Czecho-Slovak amendment, which exactly reproduces the terms of Article 334 of the Treaty of Versailles.

M. LAMAN DE VRIES (Netherlands; speaking in French). — I greatly regret that I do not share M. Perietzeano's opinion. In the Netherlands no transit is allowed without a declaration—generally with a manifest in duplicate—and without customs officials, having the right to make a summary inspection.

The PRESIDENT (speaking in French). — The Conference has now heard both sides. As regards paragraph (a) of Article 7, we have before us the Czecho-Slovak amendment, which consists in the omission of the words *after they have been declared and subjected to a summary inspection*. The paragraph would then read as follows : —

When the two banks of a river of international concern are within the same State, goods in transit may be placed under seal or padlock, or in the custody of customs agents.

The object, in fact, is to abolish customs inspection.

M. VALLOTTON (Switzerland; speaking in French). — I support the Belgian and Czecho-Slovak Delegations. We consider that it would be a most undesirable step backward to insert the words proposed, to our very great surprise, by our friends of the Netherlands.

Sir Hubert LLEWELLYN SMITH (Great Britain). — Before the British Delegation can decide which way to vote, I should like to have a ruling on the meaning of the word *may* in the Czecho-Slovak proposal. Does it mean that States may choose between placing goods under customs seal or not? If so, I beg to point out that it gives no guarantee whatsoever, and the paragraph might as well be deleted. Everyone knows that goods *can* be placed under customs seal. If, on the other hand, this amendment means, as was explained by its supporters, that they *must* be placed under customs seal, and if the object is to omit the precaution of the summary inspection, then I regard it more favourably, but, as I understand it, the probable effect of the proposed change would be to weaken and not to strengthen what we all desire.

M. NEUJEAN (Belgium; speaking in French). — I should like to say one word in reply to the British Delegate. The word *may* means that there will be an option and not an obligation, but that if a necessity arises, we may avail ourselves of it.

While I am speaking I should like to say that I considered M. Pierrard to be completely in the right just now, and I am astonished that the Delegate of the Netherlands disputes a fact which, to my mind, is completely established under Article 20 of the Regulations for the application of Article 9 of the Treaty of April 19th, 1839, between Belgium and Holland. The passage in this Treaty reads as follows :—

Vessels proceeding from Belgium to the sea *via* the Terneuzen Canal and the Western Scheldt and *vice versa* shall be exempt from all customs inspection and formalities on the part of the Netherlands Customs, on their entry and exit and during their passage along the Terneuzen Canal, except for the placing of seals on the hatches...

This is what was said just now.

M. LAMAN DE VRIES (Netherlands; speaking in French). — I beg to be excused for having forgotten for the moment the régime of the Terneuzen Canal. I had already observed this morning, in the presence of M. Perietzeano, that this was a very exceptional case; the canal is not wide and can be supervised from the banks.

The PRESIDENT (speaking in French). — I can assure you that the Treaty of 1839 has been discussed for a very long time. It is one of the hardest problems of international politics, and you will allow me, as a historian, to tell you that we should save time if we did not enter into matters of history now. History is the past. We are in the present.

The word *may* does indeed leave a certain latitude, and as it is difficult to impose a duty, it seems to me easier to accept the word *may* than the word *must*. Of course, the British Delegate may vote as he likes, and I only put this forward as a personal comment.

Sir Hubert LLEWELLYN SMITH (Great Britain). — It would be an advantage to reserve this article, as we have done with other articles, and continue our examination of the text.

The PRESIDENT (speaking in French). — Is there to be a British amendment to substitute the word *must* for the word *may* in the Czecho-Slovak amendment?

As there is not, I put to the vote the Czecho-Slovak amendment, which consists in omitting two lines in the middle of paragraph (a) and substituting for them the words... *goods in transit may be placed under seal...*

The amendment was rejected by 13 votes to 10.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I wish to state that I voted in favour of the Czecho-Slovak amendment.

The PRESIDENT (speaking in French). — We have still the Netherlands amendment to Article 7. The Netherlands Delegation proposes to alter the second paragraph as follows : — *The transit of vessels and passengers and the transit of goods without transhipment on waterways...*

Has the Chairman of the Committee or the Rapporteur any observation to make ? I put to the vote the Netherlands amendment on the subject of transhipment.

The amendment was adopted.

It is of course understood that the words *ne pourra* are changed to *ne pourront* (1). I put to the vote Article 7 as a whole.

The article was adopted.

The meeting adjourned at 9.25 p.m.

(1) English text unchanged.

TWENTY-NINTH MEETING OF THE CONFERENCE

(Tuesday, April 19th, 1921, at 9 a.m.)

ADOPTION OF ARTICLES 8 TO 22 — APPROVAL OF ADDITIONAL PROTOCOL — ADOPTION OF ARTICLE 4 — DECLARATIONS WITH REGARD TO THE CONVENTION — ADOPTION AS A WHOLE, BY ROLL-CALL, OF CONVENTION AND STATUTE ON INTERNATIONAL REGIME OF NAVIGABLE WATERWAYS

The meeting opened with M. Hanotaux, President, in the Chair.

ARTICLE 8

The PRESIDENT (speaking in French). — We will continue the discussion of the articles. I will read Article 8 :—

Subject to the provisions of Articles 4 and 14, the nationals, property and flags of all the Contracting States shall, in all ports situated on a navigable waterway of international concern, enjoy, in all that concerns the use of the port, including port dues and charges, a treatment equal to that accorded to the nationals, property and flag of the riparian State under whose sovereignty or authority the port is situated. It is understood that the property to which the present paragraph relates is property originating in, coming from or destined for, one or other of the Contracting States.

The equipment of ports situated on a navigable waterway of international concern, and the facilities afforded in these ports to navigation, must not be withheld from public use to an extent beyond what is reasonable and fully compatible with the free exercise of navigation.

In the application of customs or other analogous duties, levied on the occasion of the importation or exportation of goods through the aforesaid ports, no difference shall be made by reason of the flag of the vessel on which the transport has been or is to be accomplished, whether this flag be the national flag or that of any of the Contracting States.

The State under whose sovereignty or authority a port is situated may withdraw the benefits of the preceding paragraph from any vessel if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

In the absence of special circumstances justifying an exception on the ground of economic necessities, the duties provided for above must not be higher than those levied on the other customs frontiers of the State interested, on goods of the same kind, source and destination. All facilities accorded by the Contracting States to the importation or exportation of goods by other land or water routes, or in other ports, shall be equally accorded to importation or exportation under the same conditions over the navigable waterway and through the ports referred to above.

M. SINIGALIA (Italy; speaking in French). — Article 8 should be brought into accord with the corresponding article of the Resolution concerning ports. This calls for a slight alteration in the form. In article 8 of the Resolution concerning ports, it appeared necessary to establish a distinction, from the point of view of equality of treatment, between customs dues and local octroi or consumption dues. Perfect equality may be admitted for customs dues, which depend on the general laws of the State; but the same equality cannot be admitted for octroi and consumption dues, which depend on local authorities. Article 8 of the Resolution on ports reads as follows :—

In the levying of any customs, local octroi, consumption duties or in particular of any incidental charges imposed on imports or exports, no difference shall be made...

The second paragraph contains the following addition :—

In the absence of special circumstances justifying an exception on account of economic needs, the customs must not be higher than those imposed at the other customs frontiers of the State concerned on imports and exports...

I think the same provision should be introduced into Article 8 of the Convention on Navigable Waterways, which deals with the same question. I therefore propose that in the third paragraph, between the words *customs* and *duties*, the words *or other analogous* should be added; and that the words *local octroi or consumption duties or incidental charges* be added after the word *duties*; and that in paragraph 5 the words *customs duties* be substituted for the words *duties the provided for above*.

M. BARRAIL (France; speaking in French). — Could we not allow the words *or other analogous* to remain and still add *local octroi*...? Dues other than local octroi or consumption duties may be considered as customs duties.

M. SINIGALIA (Italy; speaking in French). — The words which I propose to add *or incidental charges* appear to me to make the words *or other analogous* superfluous; the incidental charges would be considered as customs dues.

M. BARRAIL (France; speaking in French). — We cannot say that incidental charges are considered as customs dues.

M. SINIGALIA (Italy; speaking in French). — The object of the proposal is to make the article in the Resolution on Ports correspond to that in the Convention on Navigable Waterways, as these articles deal with the same subject. Any discrepancies between the two texts may give rise to difficulties.

M. BARRAIL (France; speaking in French). — You are quite right, but we might have used for the ports the Waterways Convention text, which had previously been adopted, at any rate in Committee. In order that we may all agree, I ask that the words *or other analogous* be kept, and I accept the addition proposed by M. Sinigalia of the words *local octroi or consumption duties*.

M. SINIGALIA (Italy; speaking in French). — I agree.

The PRESIDENT (speaking in French). — The first sentence of the third paragraph would thus begin : — *In the application of customs or other analogous duties, local octroi or consumption duties levied on the occasion*...

M. SIBILLE (France; speaking in French). — We are making a Convention on the Regime of Navigable Waterways of International Concern, and we are incidentally laying down certain rules regarding river navigation, but I think we shall all agree that we should not deal with maritime navigation. There are large rivers which are accessible to sea-going vessels up to a certain distance from their mouth, and on which there are large inland seaports. These inland ports have a double character, —they are at the same time seaports and river-ports. In Article 8 which we are now discussing we propose to lay down certain rules regarding river-ports situated on international rivers. I think that those ports which are both seaports and river-ports should not be dealt with in this Convention except in so far as they are river-ports. The navigation which we are to regulate here is not maritime navigation below these ports, but river navigation. If this article were adopted in the form proposed, any Power which has an inland seaport could be bound in respect of the regime governing its merchant marine; in particular it could no longer establish flag surcharges. Flag surcharges still existed in the last century in France. We abolished them in 1866. It was desired to re-establish them about 1872 or 1875, but this could not be done because we were bound by international Conventions.

At the present moment we are uncertain as to what will be the regime for the merchant marines of the world. For my part I wish to reserve for my own country the power of having recourse to the system of flag surcharges. I should not like my adherence to the principle laid down in Article 8 to be brought up against me. The Convention should regulate river transport and not maritime transport. We are dealing here only with river law and not with maritime law. I propose therefore to add after the word *transport* in paragraph 3 of Article 8 the word *by waterway*. I will take, for example, the port of Antwerp, which will be an international port, as it is situated on a river common to France and Belgium. This article is not to apply to the maritime part of the river between Antwerp and the sea. On the other hand, it will apply above Antwerp in the direction of France. This is a distinction which I think it is absolutely necessary to make.

M. HOSTIE (speaking in French). — I only wish to point out that there are sea-ports above Antwerp,—Ghent for example,—and also that Antwerp has been an international port for nearly fifty years.

M. SIBILLE (France; speaking in French). — Very well; perhaps I should have spoken of Ghent instead of Antwerp. But I maintain, and you will probably admit, that we should not regulate maritime navigation in this place. If you wish to regulate the navigation of the river in its maritime port, you are dealing, I repeat, with maritime law, and I intend to reserve for my country this right to establish at will the new regime for its merchant marine.

The PRESIDENT (speaking in French). — Paragraph 3 of Article 8 would therefore read as follows :—

In the application of customs or other analogous duties, local octroi or consumption duties or incidental charges, levied on the occasion of the importation or exportation of goods through the aforesaid ports, no difference shall be made by reason of the flag of the vessel on which the water transport...

Here M. Sibille's addition will be inserted.

... has been or is to be accomplished, whether this flag be the national flag or that of any of the Contracting States.

M. PIERRARD (Belgium; speaking in French). — In spite of my friendship with M. Sibille and the French Delegation, I greatly regret that I cannot accept the wording which has been proposed. If we are making a Convention, it is obviously not for inland waterway navigation, but in order to open international ports to maritime navigation. Moreover if we suggest to States that they should begin levying flag surcharges I regret that I for one cannot agree to this proposal.

The PRESIDENT (speaking in French). — Would M. Sibille agree to an interpretative reference in the records, explaining that the French Delegation understood the word *transport* to apply only to inland waterway navigation ?

M. SIBILLE (France; speaking in French). — The Belgian Delegation wishes this word to be applied to maritime navigation. We are therefore completely at variance. The Conference must settle the difference of opinion. I maintain that we cannot lay down any provisions as regards maritime navigation. I intend to reserve for my country complete freedom as regards the regime of the merchant marine, and I cannot agree to bind myself as regards this regime. The Conference was not summoned to deal with questions of merchant marine; we are here for the sole purpose of settling questions of waterway navigation.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation supports the view of the French Delegation. We are not called upon here to regulate in any

way the regime of maritime navigation, but that of inland water transport. It is in this sense I have hitherto understood the provision now before us, and as the Belgian Delegation does not think that it can support this view, it would be desirable for it to give us its reasons.

The PRESIDENT (speaking in French). — The Convention as a whole certainly refers to inland waterways; in fact, great precautions have even been taken in order to avoid encroaching upon maritime questions. Although I am not qualified to give a decision, I would beg the Conference to think of its agenda as a whole. Has M. Pierrard any reply to make to M. Winiarski?

M. PIERRARD (Belgium; speaking in French). — I can only repeat what I have already said. I think that the Convention which we are preparing here does not refer exclusively to questions of inland waterways, and I do not think that we should be assisting humanity along the path of progress if we were to return to the regime of flag surcharges. I must state that I, for my part, could not accede to this. I do not know what are the interests of France in this matter; I think that she has no international ports. The question is so serious that it cannot be thus solved *ex abrupto* on the occasion of an unexpected alteration proposed in the course of discussion.

The PRESIDENT (speaking in French). — The question of flag surcharges was only mentioned by M. Sibille as an example. It has certainly been asked and insisted upon that maritime navigation should not be dealt with here. As M. Sibille asks for the addition of the words *by waterway* after the word *transport* we are still keeping to our agenda. We must not read allusions into what M. Sibille only cited as an example.

Sir Hubert LLEWELLYN SMITH (Great Britain). — The British Delegation is entirely in accord with the French view that the object of this Convention is to regulate inland navigation and not maritime navigation. My difficulty arises from an entirely different cause. When we have a Convention, every clause of which has been discussed at great length, and then, at the very last moment, a word is put into one of the clauses, I wish for time to see the effect of this word on the whole Convention. Much as I dislike asking for an amendment to be reserved, I feel that I must ask that we should have time to consider what would be the effect of introducing a word such as this. On the general question that this is a Convention to regulate river navigation and not maritime navigation, I am entirely in accord; but a sea-going vessel may carry on river navigation, and we have to be very careful to see what is meant by transport by waterway, which it is proposed to add. I would venture to appeal to the French Delegate and ask him whether a carefully drafted sentence could not be inserted in the records, or, if he likes, in the Final Act, making it clear that nothing in this Convention is intended to deal with the general question of maritime navigation, and whether this solution would not meet the difficulties which he feels, and with which I must say that I sympathise up to a certain point.

M. ADATCI (Chairman of the Waterways Committee; speaking in French). — I entirely share the views of Sir Hubert Llewellyn Smith. The Committee held numerous meetings and studied this question in detail; all the experts and the chief delegates came and expressed their views, and when they did not receive satisfaction they reserved the right to make a few brief remarks in plenary meeting. I thought therefore that no incident would take place in the Conference; if at the last moment not merely textual amendments, but also amendments of substance, are introduced, our work will never come to an end; the Conference must not enter upon this dangerous path. Except in case of absolute necessity we should refrain from introducing surprise amendments at the last moment.

M. NEUJEAN (Belgium; speaking in French). — This should indeed not be done except in case of absolute necessity.

M. SIBILLE (France; speaking in French). — The Delegate of Great Britain has expressed his surprise at finding a question of such importance as this raised at the last moment. He admits, however, that it is of very great importance, and he shares our views to a large extent. But he appeals to my conciliatory spirit, asking me to allow the text placed before us to pass, on condition that a provision satisfying my wishes is placed in the Final Act. I accept this proposal in the hope that the Conference will insert in the Final Act the provision in question, which we will draw up by common agreement (1).

The PRESIDENT (speaking in French). — The text of the Convention remains unchanged, but it is understood that the British and French Delegations will collaborate in drawing up a text for inclusion in the Final Act. We have before us, therefore, a text which has not undergone any change other than that proposed by the Italian Delegation. I think there is no need to read it again.

I will put to the vote paragraph 3 of Article 8.

Paragraph 3 was adopted.

I will put to the vote Article 8 as a whole.

Article 8 as a whole was adopted.

ARTICLE 9

The PRESIDENT (speaking in French). — We will now pass to Article 9, which reads as follows :—

(1) Each riparian State is bound, on the one hand, to refrain from all measures likely to prejudice the navigability of the waterway or to reduce the facilities for navigation, and, on the other hand, to take at the earliest possible opportunity all necessary steps for removing any accidental obstacles and dangers to navigation.

(2) If such navigation necessitates regular upkeep of the waterway, each of the riparian States is bound by obligation to the others to take such steps and to execute as quickly as possible such works on its territory as are necessary for the purpose, taking account at all times of the conditions of navigation as well as of the economic state of the regions served by the navigable waterway.

In the absence of an agreement to the contrary, any riparian State will have the right, on valid reason being shown, to demand from the other riparians a reasonable contribution towards the cost of upkeep.

(3) In the absence of legitimate grounds for opposition by one of the riparian States, including the State territorially interested, based either on the actual conditions of navigability in its territory, or on other interests such as, particularly, the maintenance of the normal water-conditions, requirements for irrigation, the use of water-power, or the necessity for constructing other and more advantageous ways of communication, a riparian State may not refuse to carry out works necessary for the improvement of navigability which are asked for by another riparian State, if such State offers to pay the cost of the works and a fair share of the additional cost of the upkeep. It is understood, however, that such works cannot be undertaken so long as the State on the territory of which they are to be carried out objects on the ground of vital interests.

(4) In the absence of any agreement to the contrary, a State which is obliged to carry out works of upkeep is entitled to free itself from the obligation if, with the consent of all the co-riparian States, one or more of them agree to carry out the works instead of it; as regards works for improvement, a State which is obliged to carry them out shall be freed from the obligation if it authorises the State which made the request to carry them out instead of it. The carrying out of works by States other than the State territorially interested, or the sharing by them in the cost of works, shall be so arranged as not to prejudice the rights of the State territorially interested as regards the supervision and administrative control over the works, or its sovereignty and authority over the navigable waterway.

(5) On the waterways referred to in Article 1 *a*, the provisions of the present Article are to be applied subject to the terms of the Treaties, Conventions, or Navigation Acts which determine the powers and responsibilities of the International Commission in respect of works.

(1) As a result of this exchange of views the following text was inserted in the Final Act of the Conference :

“The Conference declares that in laying down in Article 9 of the Statute relating to Navigable Waterways of International Concern a regime for ports situated on such waterways, there was no intention of settling any question of principle relating to the regime of national seaports.”

Subject to any special provisions in the said Treaties, Conventions, or Navigation Acts, which exist or may be concluded :

a) Decisions in regard to works will be made by the Commission.

b) The settlement, under the conditions laid down in Article 19 below, of any dispute which may arise as a result of these decisions, may always be demanded on the grounds that these decisions are *ultra vires*, or that they infringe international Conventions governing navigable waterways. A request for a settlement under the aforesaid conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decision of this Commission shall be in conformity with the provisions of the present Article.

(6) Notwithstanding the provisions of paragraph 1 of this Article, a riparian State may, in the absence of any arrangement to the contrary, close a waterway wholly or in part to navigation with the consent of all the riparian States or of all the States represented on the International Commission if one exists.

As an exceptional case one of the riparian States of a navigable waterway of international concern not referred to in Article 1 *a* may close the waterway to navigation, if the navigation on it is of very small importance, and if the State in question can justify its action on the ground of an economic interest clearly greater than that of navigation. In this case the closing to navigation may only take place after a year's notice and subject to an appeal on the part of any other riparian State under the conditions laid down in Article 19. If necessary the judgment shall prescribe the conditions under which the closing to navigation may be carried into effect.

(7) Should access to the sea be afforded by a navigable waterway of international concern through several branches, all of which are situated in the territory of one and the same State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply only to the principal branches deemed necessary for providing free access to the sea.

M. WINIARSKI (Poland; speaking in French). — In paragraph 3 I should like to add *timber-rafting* to the list, which is obviously not exhaustive :—

... or on other interests such as, particularly, the maintenance of the normal water-conditions, requirements for irrigation, the use of water-power, the necessity for constructing other and more advantageous ways of communication or timber-rafting...

This Convention may indeed apply to navigable waterways which are of very slight importance for navigation, but of great importance for rafting.

Sir Hubert LLEWELLYN SMITH (Great Britain). — At the moment when the Polish Delegate spoke, I was about to propose the substitution of the words *amongst others* for the word *particularly*.

The PRESIDENT (speaking in French). — I agree that this substitution may be made, and the records, which will, of course, contain M. Winiarski's speech, will indicate exactly what is referred to.

M. WINIARSKI (Poland; speaking in French). — We are in agreement.

M. VALLOTTON (Switzerland; speaking in French). — As you heard yesterday, the Swiss Delegation has very strong reasons for hoping that it will now be possible for the text of Article 9 to be improved; otherwise we should have to make a very clear reservation with regard to the subsequent attitude of our Government. Hitherto, in conventions on the navigation of international rivers, the aim has been not to give very extensive rights, but rather to give permanent rights, which should make it possible for riparian States—and particularly upstream States, which sometimes do not possess any other access to the sea except the international river—to expend with an easy mind sums—and often very considerable ones—necessitated by an ever-increasing traffic, and to be applied not only to the upkeep but also to the improvement of the waterway, installations in ports and so forth. Our objection to this Convention, and particularly to Article 9, is that it has introduced the opposite system, involving legal ambiguities, a haphazard system of law,—a system based on the will of individual States, as opposed to a clear definition of the rights and obligations of each individual State.

I will explain my meaning. In the first place, in defining the minimum upkeep, a most regrettable restriction has been introduced,—the result of a hasty improvisation,—namely, the rule that riparian States should only take precautions against accidents. Consequently, when navigation is exposed to permanent obstacles or damage,

the State *a contrario* will not be bound to restore it. This situation is really extraordinary, and I may remind you that it is due solely to the fact that the Portuguese Delegation once pointed out a case which, to my mind, did not in the least come within the scope of upkeep, and in order to satisfy this Delegation the word *accidental* was added. This morning we asked the Portuguese Delegate whether he insisted upon the retention of this word, and he told us that he saw no objection to omitting it. That in itself would constitute progress, and the object of the first of our proposals is to omit this word in section 1 of Article 9. We are decidedly of opinion that section 2 refers to all those European watercourses which come under the category of waterways of international concern and which all, as a general rule, require regular upkeep.

This is an innovation. Hitherto we have held to a very simple principle,—that inscribed in a Convention which in this respect has proved its worth; I refer to the Convention of Mannheim,—the Rhine Act, Article 28 of which reads :—

The High Contracting Parties each undertake, as has been done in the past, each in respect of its own territory, to place and maintain in good condition existing haulage routes and also the channel of the Rhine... the riparian State in whose territory are situated those parts of the river which have not yet been placed in adequate order and the channel of which is therefore variable will cause buoys to be placed in such channel in clearly marked positions...

I will not read any more, but I am here enunciating a principle which is perfectly clear. Each of us maintains the waterways on his own territory and for his own territory; that I think rests on experience. It amounts to this, that if we take the sum total of the interests represented on a waterway such as the Rhine, it becomes clear that each is interested in proportion to the extent of his territory, and any other method of distribution would only result in wholly unnecessary quarrels. For this we have substituted a formula according to which each of the riparian States, by showing just and valid reasons for so doing, will have the right to require the others to bear their share of the cost of upkeep. But if you compare this with section 4, according to which the State which is bound to carry out works of upkeep may free itself from this obligation with the consent of all the co-riparian States, if one or more of them agrees to carry out these works in its stead, you will have laws of a most uncertain kind which will certainly give rise to most regrettable practices. Such a Convention cannot but have a most uncertain life, and, in our opinion, States will certainly be led to do nothing during the period in which it is in force, and it will be realised that its provisions are quite incapable of being applied. We therefore propose the following amendments to this section :

Omit the words :

In the absence of an agreement to the contrary, any riparian State will have the right, on valid reason being shown, to demand from the other riparians a reasonable contribution towards the cost of upkeep,

and substitute for them the following text :

If necessary, special agreements shall be concluded between two or more riparian States for the execution of certain works for improvement, with the assent of all the riparian States, with a view to freeing partially any of them who may be bound to carry out such works.

Then at the beginning of section 4 we ask for the following words to be omitted :

In the absence of any agreement to the contrary, a State which is obliged to carry out works of upkeep is entitled to free itself from the obligation, if with the consent of all the co-riparian States one or more of them agree to carry out the works instead of it;

and to say :

If necessary, special agreements shall be concluded between two or more riparian States for the execution of certain works for improvement, with the assent of all the riparian States, with a view to freeing partially any of them who may be bound to carry out such works.

The whole of the section would thus disappear and would be replaced by the principle of voluntary consent.

I am convinced that in practice it is only on these lines that anything really capable of application will be arrived at,—on the principle that as regards improvements, in particular, it is only special agreements which will have a practical effect. This was indeed what the Rapporteur, M. Montarroyos, himself stated with great force, when he referred to Conventions in Latin America, the efficacy of which has been proved. We hope that the Conference will find it possible to take our wishes into account. Let me assure you that we are formulating these proposals with the desire to see this Convention adopted and to render it more acceptable. If the Conference considered that it must leave our wishes aside, we should be very sorry, but of course we should do our best to make use of this article; we are convinced, however, that this will be difficult.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I greatly regret that I am compelled to oppose M. Vallotton's proposal. I should like to say first of all that this article is the result of a compromise, and it was only M. Vallotton who would not give his support to the text. The mere fact that he asks for the word *accidental* to be omitted shows that he did not perhaps see his way to comprehend fully the mechanism of this article. Section 1 lays down that *each riparian State is bound... to refrain from all measures likely to prejudice the navigability... and... to take... all necessary steps for removing any... accidental... obstacles.*

Many examples were cited in Committee in connection with the case put forward by the Portuguese Delegate. We cited the case of a tree which has fallen into a river. Of course this is an accidental obstacle; it was to things of this kind that the article was intended to refer. The first section applies to upkeep of this kind; the second section refers to regular upkeep. The word *regular* indicates the greater importance of upkeep of this kind. We then come to the third section, which refers to works for improvement. You will see the gradation,—the natural sequence of ideas, in this article.

M. Vallotton said that the third section of this article contained an innovation as regards regulations of this kind. That may be so. In the first place, we drafted this article in such a way that it should apply to international rivers as a whole. To our idea M. Vallotton opposes a particularist idea which affects two or three special rivers. I do not think that in principle there is any innovation.

As regards the agreements which M. Vallotton proposes to substitute for the regulations laid down here, I said that in American treaties, instead of entering into certain details, provision was made for the conclusion of subsequent agreements; but that refers to individual rivers. If we wished to make a Convention for rivers as a whole we must adopt another system. Two contracting States may have mutual confidence, and may adopt the system of agreements; but for general application a system of regulations must be provided. I therefore considered that the Conference should retain the article in its present form. I should also like to point out that this text is the result of a compromise within the Committee itself.

M. VALLOTTON (Switzerland; speaking in French). — I greatly regret that I must speak once more, but the text does not satisfy us, because a formula has not been found which would allow those in other continents who do not wish to carry out works of upkeep on their watercourses to continue not to do so, but which nevertheless would not involve the riparian States of the watercourses of eastern Europe in such a general retrograde movement. My objection to the wording which I have criticised is that it establishes a formula of an absolute kind which introduces as regards upkeep—and the Rapporteur did not reply to this point—the idea, which does not seem to us to be just, that a riparian State may free itself from its obligation as regards upkeep—an obligation which has hitherto been absolute—on valid grounds of which, according to the text, it would be the sole judge. One may say that the words *in the absence of an agreement to the contrary* introduce a safety-valve.

As regards the riparian States of the Rhine, the Treaty of Peace, which is itself the agreement to the contrary, appears to refer the question to the present Convention in a clause which is by no means clear. Consequently if, as I have continually asserted on behalf of the Swiss Delegation, we do not now lay down on this point wider regulations than those in this article, which reserves regulations that have not been

explained, we may be told :—These provisions will be applicable to the Rhine. I consider that this would constitute a violation of the Treaty, and I have unceasingly opposed it from the very beginning of this Conference. This is the most serious criticism which I offer to the text.

M. PERIETZEANO (Roumania; speaking in French). — I have no intention of re-opening this question in Conference; it has been debated both in Sub-Committee and in Committee, and as the Chairman, M. Adatci, has told you, it has been examined in all its aspects. To discuss it again would be needlessly to prolong the debate. I support the clear explanation given by the Rapporteur, and doubtless the Conference also supports it,—even M. Vallotton I think, since his second speech shows a change in method. That means one more complication in the discussion.

In the first place M. Vallotton began by proposing amendments which he considered just and equitable. Now, after the Rapporteur's explanation, he no longer finds them just and equitable for everybody, but he declares that they have already become acquired rights, as it were, in virtue of some acts or other which would be suited to such and such a river. He is therefore no longer discussing what is equitable for all, but what has been acquired for certain rivers in virtue of certain instruments. If we do not consider these instruments just, why should we impose principles based on them, upon those to whom they do not refer ?

M. Vallotton tells us that the aim of this Conference is to extend freedom of navigation. I once more protest against M. Vallotton's proposal, which takes no account of the sovereignty of States. If previous events have established principles which go beyond what we are here to do, and if we consider that these principles are not just, it is not for us to impose them upon the whole world. The Rapporteur has described how the text was adopted. No new argument can be adduced here; moreover we have no time to enter upon the whole discussion again. I therefore ask the Conference not to change the proposed text, which is of very considerable importance for us.

The PRESIDENT (speaking in French). — The Swiss Delegation submits the following three amendments to this article :

1. In section 1 omit the word *accidental*;
2. Omit the second paragraph of section 2;
3. Substitute for section 4 the words :

If necessary special agreements shall be concluded between two or more riparian States for the execution of certain works for improvement, with the assent of all the riparian States, with a view to freeing partially any of them who may be bound to carry out such works.

This last change contains the essence of the Swiss proposal.

The Rapporteur does not accept the Swiss proposal, and he has said that the present text of the article is the result of a compromise. Some slight changes have been accepted in the course of the discussion,—the British Delegation proposed to substitute the words *amongst others* for the word *particularly*. The Conference has also agreed to include in the records the observations of the Polish Delegate. Further, in section 4 a slight textual change is necessary; instead of *the sharing by them* we must say *the sharing by these States*. I will ask you first of all to take a decision on the Swiss amendments as a whole. I will then put to the vote the text proposed by the Committee, with the changes which I have mentioned.

The Swiss amendment was rejected and the Committee's text was adopted by 20 votes to 5.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — Our labours are now terminating, and I am happy to note that they have arrived at a successful conclusion. But, though I greatly regret to be obliged to do so, I feel that I must mention the fact that we have always maintained that the general Convention which we are now preparing was intended to serve as a basis for rivers statutes. Our work is therefore twofold; we are preparing a general Convention on navigable waterways, while another Conference at Paris is preparing a statute for the Danube. If our general

Convention is to serve as a basis for the Danube statute, I do not see how the work of the Conference sitting at Paris can be brought into accord with our work. I will leave my colleagues to realise the mistake which was made in granting the powers given to the Paris Conference; I should like to emphasise this.

I will return to the question which we are now discussing. We have always maintained that according to Article 338 of the Treaty of Versailles, the provisions which we have drawn up here would supersede the provisional clauses of Articles 332 to 337. It was from this point of view that we proceeded to discuss the most vital questions. As was very truly observed by Professor Alvarez, whose absence we greatly regret, Articles 4, 9 and 16 constitute the kernel of the general Convention on navigable waterways. Article 4 deals with restrictions, Article 9 with works for upkeep and improvement and Article 16 with the question of local transport. These are all articles from the *Green Book*. I may note with pleasure that our Delegation put no difficulties in the way of these vital questions; we remain faithful to the text of the *Green Book*. If we are speaking to-day against some of the decisions taken in the new articles 4 and 9, which have replaced Articles 4, 9 and 16 of the *Green Book*, it is not our fault. We are obliged to do so in view of the considerable changes which have been introduced into these articles.

I will speak later of Article 4, as it has been provisionally postponed, and for the moment I will confine myself to Article 9. In section 4 of this article it was agreed that the word *assured* should be replaced by a less emphatic term...

The PRESIDENT (speaking in French). — I cannot allow M. Avramovitch to re-open the discussion of a section which has already been voted.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I am very sorry, Mr. President, and I will not speak of it any more. I will pass to section 5, the first part of which reads as follows :

(a) *Decisions in regard to works will be made by the Commission.*

If this text is not made more precise, it may be prejudicial to all international rivers falling under the administration of international Commissions. It only refers to one special case, that of the mouths of the Danube, for which there is a European Commission referred to in Article 331 of the Treaty of Versailles. It is now desired to impose the same regime on the Middle Danube above Braila. We could agree if the following text could be substituted for paragraph (a) which I have read :—*It will be for the Commission to make recommendations with regard to works and also to safeguard international co-operation.* I have based this text on the *Green Book*. I beg you to consider this text, and to bear in mind the perfectly legitimate need felt by small States, and by riparian States in general, to safeguard their rights of sovereignty and administration on these rivers, whilst allowing for the measures necessary to facilitate navigability. If our text were not adopted we should be placed in the same state of tutelage as colonial rivers. I may add that the Report contains an explanation on this point. We are told that this is a question of decisions *concerning administration*. What administration? An administrative decision regarding the works to be carried out, or regarding upkeep, or legal administration? Or perhaps administration of navigability? In short, the proposed text is too definite, and we beg the Conference to adopt the wording which we propose to substitute.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — In reply to M. Avramovitch I can only repeat what I have already said, namely, that this is only a question of general administrative decisions which in no way apply to details of works. As regards M. Avramovitch's fear that States may lose their power of initiative, I may set his mind at rest in one word, by telling him that in case of dispute, paragraph *b* opens the door to a sanction on the part of the Permanent Court of Justice.

The PRESIDENT (speaking in French). — On behalf of the Committee the Rapporteur proposes, then, on the strength of the arguments previously adduced during the discussion in Committee, to reject M. Avramovitch's amendment and to retain the Committee's text. I will put to the vote M. Avramovitch's amendment, the object of

which, let me remind you, is to substitute for paragraph *a*) of section 5 the following text :

It will be for the the Commission to make recommendations with regard to works, and also to safeguard international co-operation.

The amendment was rejected by 16 votes to 6.

The text of the Committee is therefore retained.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — I will give my opinion on this question at the end of the discussion of the Convention.

The PRESIDENT (speaking in French). — I will now put to the vote Article 9 as a whole.

Article 9 as a whole was adopted.

The PRESIDENT (speaking in French). — We will now pass to Article 10 :

ARTICLE 10

In the absence of any contrary stipulations contained in a special agreement or treaty, for example, existing Conventions concerning customs and police measures and sanitary precautions, the administration of navigable waterways of international concern is exercised by each of the riparian States under whose sovereignty or authority the navigable waterway is situated. Each of such riparian States has, *inter alia*, the power and duty of publishing regulations for the navigation of such waterway and of seeing to their execution. These regulations must be framed and applied in such a way as to facilitate the free exercise of navigation under the conditions laid down in this Statute.

The rules of procedure dealing with such matters as ascertaining, prosecuting and punishing navigation offences must be such as to promote as speedy a settlement as possible.

Nevertheless the Contracting States recognise that it is highly desirable that the riparian States should come to an understanding with regard to the administration of the navigable waterway of international concern and, in particular, with regard to the adoption of navigation regulations of as uniform a character throughout the whole course of such navigable waterways as the diversity of local circumstances permits.

Public services of towage or other means of haulage may be established in the form of monopolies for the purpose of facilitating the exercise of navigation, subject to the unanimous agreement of the riparian States or the States represented on the International Commission, in the case of navigable waterways referred to in Article 1 *a*).

Article 10 was adopted.

ARTICLES 10 *a*) and 10 *b*)

We will now pass to the new articles 10 *a*) and 10 *b*), which I will read :

ARTICLE 10 *a*)

Treaties, conventions or agreements relating to navigable waterways, concluded by the Contracting States before the coming into force of this Statute, are not, as a consequence of its coming into force, abrogated so far as concerns the States signatories to those treaties.

Nevertheless, the Contracting States undertake not to apply among themselves provisions of such treaties, conventions or agreements which may conflict with the rules of the present Statute.

ARTICLE 10 *b*)

If on a waterway of international concern one or more of the riparian States are not parties to this Statute, the financial obligations undertaken by each of the Contracting States in pursuance of Article 10 shall not exceed those to which they would have been subject if all the riparian States had been Parties.

M. BIGNAMI (Italy; speaking in French). — The Committee agreed to put in the first line *treaties, conventions or agreements in force... concluded between Contracting States*.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I accept this change.

The PRESIDENT (speaking in French). — The change will be effected.

M. TSANG-OU (China; speaking in French). — In order to avoid any misunderstanding as regards the new Article 10 *a*), I venture to make a short declaration as regards the effect of this article on existing conventions in China. Should the Conference adopt the new article 10 *a*) proposed by the French Delegation,—

The first paragraph should not be interpreted as extending in any way the special rights enjoyed by certain Treaty Powers in pursuance of existing treaties as regards navigable waterways and ports.

The second paragraph may only be applied to ports and waterways which are already open to international commerce.

The PRESIDENT (speaking in French). — With the consent of the Rapporteur and the Chairman of the Committee, this declaration will be entered in the records.

M. WINIARSKI (Poland; speaking in French). — In Committee we decided to discuss the principle of this question in plenary conference. Poland is not an interested party in the question, but from the legal point of view this article appears to me inadmissible. A text could be found which would exactly meet certain special cases, but the text proposed here is extremely vague and calculated to cause trouble in international relations. Indeed, since the war we do not always know whether any Convention is in force or not. If this Convention is denounced by any State after five years, we shall not be faced with a clean sheet, but with principles of law which are applicable at all times. But the scope of the text proposed is too general, and it may give rise to difficulties. I therefore ask for some explanations, in order to allay some of my misgivings.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — Article 10 *a*) originated as follows :—At the meeting of the jurists yesterday morning, the representatives of several delegations asked us to consider with them the effect of this Convention on existing treaties. A French text was submitted to us to serve as a basis for our discussion, and it forms the new article, which I venture to read again :

Treaties, conventions or agreements relating to navigable waterways, concluded by the Contracting States before the coming into force of this Statute, are not, as a consequence of its coming into force, abrogated so far as concerns the States signatories to those treaties.

Nevertheless, the Contracting States undertake not to apply among themselves any provisions of such treaties, conventions or agreements which may conflict with the rules of the present Statute.

We were given to understand that the Waterways Committee would be prepared to accept this article.

The question arises as to what would be the effect if the present Statute were denounced. We are supposing that there will be for navigable waterways a Convention similar in all respects to that adopted for transit, a Convention which will contain a clause granting to all Contracting States the right to denounce the Convention after a period of five years. What would be the effect of this denunciation, in the first place from the point of view of the programme of work in hand, but not completed at the time of the denunciation? In order to answer this question, the jurists proposed to add the following sentence at the end of Article 8 of the Convention properly so-called :

It shall not, in the absence of an agreement to the contrary, prejudice engagements entered into before the denunciation relating to a programme of works. The object of

this addition is to safeguard the rights of interested Powers as regards uncompleted work, and I was told that everybody had agreed to accept it.

The second point refers to the special case of the Mannheim Convention. In the Treaty of Versailles there are provisions with regards to the Mannheim Convention, which at first sight appear somewhat contradictory. We have already explained to the Members of the Conference who were present at our meeting that it was not possible to remove from this Convention the contradictions, if any, which exist between the various articles of the Treaty which refer to the Mannheim Convention. They all realised that their situation was safeguarded by the terms of Article 2 of the Convention, which states that this Convention does not affect the rights arising out of the provisions of the treaties of peace, not only for the signatories but also for the beneficiaries.

In the third place, there is the question as to what is to happen to previous treaties which will be either abrogated or superseded by this Convention, should the latter be denounced. We replied that the denunciation would not have the effect of reviving the *status quo ante*. It is for this reason that we thought it would perhaps be desirable to maintain the treaties in the form in which they exist at present.

There is one more question, which is referred to in the last paragraph of Article 10 a). It may happen that as regards rivers there are at present some practices which are not in conformity with the terms of the Statute. We therefore propose to insert the following text :

Nevertheless, the Contracting States undertake not to apply among themselves any provisions of such treaties, conventions or agreements which may conflict with the rules of the present Statute.

We did not say *with the provisions* or *with the terms of the present Statute*, because that might have involved slight changes. That is the history of Article 1 a). I think the Polish Delegate believes that the jurists have here made an article on their own...

M. WINIARSKI (Poland; speaking in French). — No, no !

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French)... and without any authority to do so. I assure you, however, that our sole intention was to find a text in accordance with the idea which was given to us as the opinion of the majority of the Committee.

The PRESIDENT (speaking in French). — I think that the Conference will find Sir Cecil Hurst's explanation perfectly clear. In my view it removes any anxiety as regards the legal purport of this article. Moreover, as it is inserted in the records, it may be found there.

M. WINIARSKI (Poland; speaking in French). — I should like to reply, because there is one point which does not appear to me quite clear.

If I understand Sir Cecil Hurst aright, the question put to the Committee of Jurists was whether it was absolutely necessary to say something. I think it was not necessary. The question of works was settled by the Conference. As regards the Mannheim Convention, it refers particularly to Article 4 of the Statute, which is reserved. I think, moreover, that the Committee has found a suitable text. Further, if we wish to find some more precise wording we might return to the Swiss proposal, which was not discussed in Committee, and which states that *the provisions of the Rhine Navigation Act (Convention of Mannheim, 1868) which were not abrogated by the Treaty of Versailles, and also the Articles of the said Treaty of Versailles, shall remain in force notwithstanding the present Convention, subject to the unanimous consent of the riparian States*. For my part I consider that this proposal is acceptable and that it would solve the difficulty.

There remains a third question, that of previous treaties. In this connection I do not see the necessity of introducing this clause, which in my view may engender difficulties. In Article 10 of the Transit Convention we stated that this Convention by itself did not abrogate previous treaties or conventions, whereas here we leave the possibility of denouncing such previous treaties and conventions or of modifying them;

but there is no plurilateral Convention on the subject of transit. I think that the text proposed perpetuates, as it were, all conventions and treaties, even plurilateral ones, and renders it more difficult to change them.

The PRESIDENT (speaking in French). — Sir Cecil Hurst clearly explained that he drew a distinction between rules and certain special provisions.

M. WINIARSKI (Poland; speaking in French). — I think it is quite inadmissible to allow this possibility of perpetuating treaties and conventions, as it were. In order to meet the apprehensions of the Jurists' Committee or of certain delegations, I think we might find a more precise text.

M. VALLOTTON (Switzerland; speaking in French). — I think we are all agreed in saying that the object of this Conference and its competence are clearly determined by the Covenant. Its object is to establish freedom of communications. That is, I think, the solid ground on which we should build. The present Convention can have no wider effect than to regulate this freedom. That is a point on which, I think, there is no disagreement. Is the Convention more liberal than any former Convention? From the point of view of freedom of navigation, this new Convention should take precedence of the old one. Is it, on the contrary, less liberal? In that case that article will be put into application which stipulated that greater facilities should be maintained.

The next question is to what extent this Convention can regulate the relations between riparian States,—the relations between States interested in the same waterway, when the regulations which these riparians desire to establish *inter se* produce the result aimed at by the Covenant and by this Conference. In regard to this I beg to repeat the declarations which I have already made, and I think that is the view of very many delegations. It would be entirely contrary to the aim which we are pursuing if, on the pretext of progress, we were to do anything to prejudice the freedom of action of the States interested in one and the same waterway when they seek to obtain the best results as regards navigation,—when they seek to facilitate this navigation as far as possible.

We claim the freedom established in navigation acts; we claim that these acts should be retained so far as they are preferable to the present Convention; and in any case, it is in that sense that we interpret—and, I must say, very definitely—the New Article which has been submitted and commented upon; and, in particular, it is in that sense that we interpret the words *the rules*. We consider that it is a question of the international public rules, that is to say, rules governing the right to travel, to use waterways, ports, installations. In regard to the question as to how this right of circulation will be established, that is where the freedom of action of the contracting States comes in, and there is no public rule on this question.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — After Sir Cecil Hurst's explanation, the remarks of M. Winiarski and above all M. Vallotton's speech, we are in a difficult position, and we no longer know what to think of Article 10a) M. Vallotton says that he wishes to maintain all those acts and rules referring to navigation, the use of ports, and the like, which have hitherto existed. It is above all the words *the rules* which cause me anxiety. With regard to these words Sir Cecil Hurst stated—and if I am wrong I hope he will correct me—that they refer to rules regarding navigation, and to usages hitherto recognised on certain rivers. I would ask Sir Cecil Hurst whether the rights are maintained which the former Austro-Hungarian Monarchy possessed on navigation routes,—rights which it had imposed upon us by force over routes now abolished.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — The reply to this question depends upon the reply to the previous question, namely, what is to happen to the treaties, conventions and agreements which originated these routes? The question is a most theoretical and abstract one, and is therefore the more difficult to solve, unless M. Avramovitch can establish their exact origin.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French).— As I stated, the former Austro-Hungarian Monarchy had before the war established certain navigation routes, and had arrogated to itself certain rights, not only on the Danube but also on our national territory. How then can Austria and Hungary, in virtue of this Article 10 a), claim the benefit of these former rules which from our point of view were more liberal? In order not to prolong the discussion I will support the view of the Polish Delegate. I urgently beg the Delegations who wish to safeguard special cases to agree to do this by means of a special provision, and not to impose upon us a text which we cannot accept.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — M. Avramovitch's anxiety is without foundation. There is certainly a misunderstanding. Article 10 a) refers only to treaties, conventions and agreements; the second paragraph refers only to treaties, conventions and agreements maintained in force by the first paragraph. The practice to which M. Avramovitch refers has its source in national legislation and not in treaties, conventions and agreements. As it originates in national legislation it is not affected by Article 10 a).

The PRESIDENT (speaking in French). — Sir Cecil Hurst's explanation is most clear. As we have the opinion of the jurists, and further, as M. Avramovitch has in mind a case which does not come under Article 10 a), I will consult the meeting as to the adoption of this article, to which no amendment has been put in.

M. WINIARSKI (Poland; speaking in French). — Pardon me for speaking once again. I hope this will be the last time, but the question was not thoroughly discussed in Committee. Will this provision have the effect of leaving untouched existing treaties and conventions which may be denounced or which are on the point of expiring, or will they be maintained in force thereby until some State denounces the convention, and then come into force once again?

The PRESIDENT (speaking in French). — We have before us a text submitted by the jurists after ripe reflection. It is understood that all the observations which have been made and all the explanations which have been furnished will be entered in the records.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — As the question has been raised of maintaining previous treaties in force or making a clean sweep of them with the new Convention, I should like to ask for an explanation.

This Convention may be denounced. If previous treaties have been abrogated and superseded by the regime laid down in the new convention, and if the Convention is denounced, what will then remain? Nothing. We must provide a regime to put in the place of the Convention when it is denounced. We might perhaps draft a clause to the effect that the conventional regime will continue in force until a new act shall be concluded by the contracting parties concerned.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — If this Convention is denounced by any Power, and if it does not contain an article corresponding to the proposed Article 10 a), that Power will, from the very fact of the denunciation, be faced with a *tabula rasa*.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — That is what I wish to know.

The PRESIDENT (speaking in French). — As Sir Cecil Hurst's reply satisfies the Delegate of Uruguay, I will put Article 10 a) to the vote.

Articles 10 a) and 10 b) were adopted by 20 votes to 1.

ARTICLE 11

I will now read Article 11.

If any of the special agreements or treaties referred to in the preceding Article has entrusted or shall hereafter entrust certain functions to an International Commission which includes representatives of States other than the riparian States, it shall be the duty of such Commission, subject to the provisions of Article 9, to have exclusive regard to the interest of navigation, and it shall be deemed to be one of the organisations referred to in Article 24 of the Covenant of the League of Nations. Consequently it will exchange all useful information directly with the League of Nations and its organisations, and will submit an annual report to the League.

The powers and duties of the Commissions referred to in the preceding paragraph shall be laid down in the Act of Navigation of each navigable waterway and shall at least include the following :—

(a) The Commission shall be entitled to draw up such navigation regulations as it thinks necessary itself to draw up, and all other navigation regulations shall be communicated to it;

(b) It shall indicate to the riparian States the action advisable for the upkeep of works and the maintenance of navigability;

(c) It shall be furnished by each of the riparian States with official information as to all schemes for the improvement of the waterway;

(d) It shall be entitled in cases in which the Act of Navigation does not include a special regulation with regard to the levying of dues to approve of the levying of such dues and charges in accordance with the provisions of Article 6 of this Statute.

Article 11 was adopted.

ARTICLE 12

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

Article 12 was adopted.

ARTICLE 13

This Statute does not impose upon a Contracting State any obligation conflicting with its rights and duties as a Member of the League of Nations.

Article 13 was adopted.

ARTICLE 14

In the absence of any agreement to the contrary to which the State territorially interested is or may be a party, this Statute has no reference to the navigation of vessels of war or of vessels performing police or administrative functions or, in general, exercising any kind of public authority.

Article 14 was adopted.

ARTICLE 15

Each of the Contracting States undertakes not to grant, either by agreement or in any other way, to a non-Contracting State, treatment with regard to navigation over a navigable waterway of international concern, which, as between Contracting States, would be contrary to the provisions of this Statute.

Article 15 was adopted.

ARTICLE 15 a)

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may, in exceptional cases and for a period as short as possible, involve a deviation

from the provisions of the above Articles; it being understood that the principle of freedom of navigation, and especially communication between the riparian States and the sea, must be maintained to the utmost possible extent.

Article 15 a) was adopted.

ARTICLE 17

This Statute does not entail in any way the withdrawal of greater facilities granted to the free exercise of navigation on any navigable waterway of international concern under conditions consistent with the principle of equality laid down in this Statute, as regards the nationals, the goods and the flags of all the Contracting States; nor does it entail the prohibition of such grant of greater facilities in the future.

M. BIGNAMI (Italy; speaking in French). — I propose that the word *existing* be added before the words *greater facilities*. This would be in conformity with what we have done hitherto. I have asked the opinion of the Jurists' Committee, and they are in favour of adding the words.

M. LELY (Netherlands; speaking in French). — Article 17 is one of the most important articles in the Convention. It gives each State the power of granting greater facilities than those which are obligatory. It is obvious that this power is necessary, especially in connection with Articles 5 and 7. Article 5 gives the power of enacting provisions necessary for carrying out the laws and regulations regarding customs, public health, precautions against diseases of animals and plants, emigration and immigration and the import and export of prohibited goods. It is laid down that these provisions should be *reasonable*. Article 7 gives the power of demanding a declaration and summary inspection. As regards this question, with which we were dealing yesterday, I think that the principle laid down in Article 5 should also be followed in the application of Article 7, especially where greater facilities have been granted. The Netherlands Delegation wishes to state that in proposing the present text of Article 7 it does not in any way imply the withdrawal of existing facilities or any going back upon the liberal regime hitherto applied by the Netherlands. Should the parties concerned enjoy greater facilities in virtue of any Convention, such facilities will be retained in accordance with Article 17.

M. NEUJEAN (Belgium; speaking in French). — I thank M. Lely very cordially for his admirable speech. The declaration which the Netherlands Delegation has made will enable the Belgian Delegation to vote for the Convention, notwithstanding Article 7, the terms of which it deplores. I wish once more cordially to thank the Netherlands Delegation.

The PRESIDENT (speaking in French). — I congratulate both delegations on having agreed with regard to this article. In particular I congratulate the Delegate of the Netherlands on the declaration which he has made to us. It will be inserted in the Final Act as an interpretation of Article 7. Subject to this addition, I will now put Article 7 to the vote.

Article 7 was adopted.

The PRESIDENT (speaking in French). — I will now put to the vote Article 17, with the addition of the word *existing*, as proposed by the Italian Delegation.

Article 17, as amended, was adopted.

ARTICLE 17 a)

I will read Article 17 a).

In conformity with Article 23 e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this

Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of navigation must be observed as far as possible.

Article 17 a) was adopted.

ARTICLE 19

Without prejudice to the provisions of paragraph 5 of Article 9, any dispute between States as to the interpretation or application of this Statute which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the Advisory and Technical Organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for free navigation which existed before the act or occurrence which gave rise to the dispute.

Article 19 was adopted.

The PRESIDENT (speaking in French). — We now come to the two New Articles. The first reads as follows :

A navigable waterway shall not be considered as of international concern on the sole ground that it traverses or delimits zones or enclaves, the extent and population of which are small as compared with those of the territories which it traverses, and which form detached portions or establishments belonging to a State other than that to which the said river belongs, with this exception, throughout its navigable course.

The article was adopted.

This Statute shall not be applicable to a navigable waterway of international concern which has only two riparian States, and which separates, for a considerable distance, a Contracting State from a non-Contracting State whose Government is not recognised by the former at the time of the signing of the present Convention, until an agreement has been concluded between them establishing, for the waterway in question, an administrative and customs regime which affords suitable safeguards to the Contracting State.

M. VALLOTTON (Switzerland; speaking in French). — This subject is not of special interest to me, but from the point of view of the clearness of the text which we intend to adopt, it would be well to know what is understood by the words *for a considerable distance*, the meaning of which is not very precise.

M. TSANG-OU (China; speaking in French). — To me it means 1,500 kilometres.

The PRESIDENT (speaking in French). — That is a length to which our European States are not accustomed. We cannot all boast of possessing rivers 1,500 kilometres in length. The general meaning of the term *considerable distance* is fully understood. Does the Conference intend to agree to the definition given by the Delegate of China ?

M. VALLOTTON (Switzerland; speaking in French). — But rivers less than 1,500 kilometres in length must not be excluded; we must adopt some other criterion.

M. TSANG-OU (China; speaking in French). — I do not insist on a length of 1,500 kilometres being mentioned. This article must be made applicable to other countries.

The PRESIDENT (speaking in French). — I think we may retain the text of the article; its meaning is self-evident, and it is a sufficient guide. Moreover, the fact that this article speaks of a *non-Contracting State whose Government is not recognised* seems to me to give a sufficiently clear indication.

I will put this article to the vote.

The article was adopted.

The PRESIDENT (speaking in French). — We have had brought to our notice another new article corresponding to Article 15 of the Statute on Freedom of Transit. It reads as follows :—

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part, or placed under the protection of, the same sovereign State, whether or not these territories are individually Members of the League of Nations.

I am obliged here to correct an error in the French text. We cannot say *faisant partie ou placés sous la protection d'un même État souverain*. We should say *faisant partie d'un même État souverain ou placés sous sa protection*.

Sir Hubert LLEWELLYN SMITH (Great Britain). — This article already appears in the Transit Convention, and the wording must therefore be identical.

The PRESIDENT (speaking in French). — Very well. But there will be an error in the French text in both Conventions, and I desire that the fact of my having raised this point be entered in the records.

APPROVAL OF ADDITIONAL PROTOCOL

I now call upon M. Lely to read his report on the annexed Protocol relating to national rivers, a matter which is inseparable from the Statute which we have adopted.

M. LELY (Netherlands, Rapporteur; speaking in French). — As I had the honour to say at the first meeting on March 22nd, during the general discussion, the aim of the task imposed upon us by the Council of the League of Nations is twofold. We must establish (1) measures to carry out Article 23 (e) of the Covenant, and (2) measures to carry out the general Conventions referred to in Articles 336 and 379 of the Treaty of Versailles. As regards this latter part of our task, the Convention now approved supplies a satisfactory solution, but as regards the first part the Convention only supplies a solution for navigable waterways which traverse or separate different States. It is well known, however, that these waterways are but a part of all the navigable waterways of the world, and it is to all that Article 23 of the Covenant refers. In view of this, I proposed amendments with the object of declaring freedom of navigation on all navigable waterways. The difficulties of the other provisions of the Convention gave rise to long discussions, and there was thus not sufficient time to arrive at a final solution on the subject of national navigable waterways. Moreover, the idea of absolute freedom of navigation found many advocates on the Committee, although it was difficult to put it into practice.

The question of national navigable waterways was solved in the Preamble, but the manner of solving it gave rise to the following two difficulties :—

(1) It is proposed in paragraph 2 of the Draft Preamble in the *Green Book* that States should declare their intention of adopting the principles of the present Convention as regards national navigable waterways. It is obvious that the application of this principle would be neither necessary nor desirable, and therefore it appeared almost impossible to accede to a declaration of this kind.

(2) The latter part of the paragraph contains an obligation involving equality as regards import and export traffic without transshipment. A provision of this kind in respect of duties and rights should be inserted in the Convention itself.

These considerations led the Officers of the Committee on Navigable Waterways to plan a Draft Protocol on the question of national navigable waterways, to be annexed to the Convention. This principle was adopted, and a sub-committee, appointed to prepare it, drew up the Draft Protocol. In submitting to you the Draft prepared by this Sub-Committee, I venture to make the following statement :—

The Sub-Committee entrusted with the task of drafting a Protocol examined the possibility of drawing up either a text with a very wide scope, or a simpler and more restricted text. It was of the opinion that on various grounds it would be preferable to have a wider Protocol, but that at present this would not be feasible in practice. Indeed, after having considered the question, the Sub-Committee became convinced that many very serious difficulties would have to be solved. This was the principal reason which led the Sub-Committee to prefer a Protocol as simple a kind as possible.

There is a further reason. Freedom of navigation and equality of treatment on national waterways are principles which would react widely on the international economy of certain States, which would in consequence be unable to apply them directly and completely over the whole of their territories. It may therefore be anticipated that several States would not sign a Protocol having so wide a scope. For this reason alone it is sufficient to show that it is better to begin with a simple Protocol possessing greater elasticity.

As regards the Protocol itself, it may be observed that it provides for two categories,—(a) and (b). It requires, for these two categories alone, perfect equality of treatment as regards the nationals, property and flag of any State signatory to the Convention, as regards import and export traffic without transshipment between the sea and ports situated on navigable waterways. Category (a) refers to canals and rivers, category (b) to rivers alone.

The Committee considered that an exception must be made as regards China. The present situation in that country as regards freedom of navigation is so complicated that complete freedom of navigation cannot be instituted forthwith. A distinction as regards freedom of navigation must therefore be made in the case of China, not only between the different rivers but also between the vessels which use them. For example, at the present time navigation is reserved for the Chinese flag as regards sailing vessels, towage, haulage and junks. Other flags are only allowed to carry on steam navigation. As a result China will not be able to sign the Protocol unless freedom of navigation is not declared on all her rivers.

Finally, the Committee considered it desirable to allow the possibility of denouncing the Protocol at any time after the expiration of a period of two years.

The Draft Protocol was adopted by the Committee on Navigable Waterways by 17 votes to 6, with 5 abstentions.

The PRESIDENT (speaking in French). — In accordance with the decision of the Committee, which was adopted by a large majority, the Rapporteur proposes that we should add to the Convention a Draft Additional Protocol, the text of which I will now read :—

Draft additional Protocol.

The States signatories of the Convention on the Regime of Navigable Waterways of International Concern, signed at Barcelona on _____, whose duly authorised representatives have affixed their signatures to the present Protocol, hereby declare that, in addition to the Freedom of Communications which they have conceded by virtue of the Convention on Navigable Waterways considered as of international concern, they further concede, on condition of reciprocity without prejudice to their rights of sovereignty, and in time of peace,

(a) on all navigable waterways,

(b) on all naturally navigable waterways,

which are placed under their sovereignty or authority, and which, not being considered as of international concern, are accessible to ordinary commercial navigation to and from the sea, and also in all the ports situated on these waterways, perfect equality of treatment for the flags of any State signatory of the Protocol as regards the transport of imports and exports without transshipment.

At the time of signing, the signatory States must declare whether they accept the obligation to the full extent indicated under paragraph (a) above, or only to the more limited extent defined by paragraph (b).

It is understood that States which have accepted paragraph (a) are not bound as regards those which have accepted paragraph (b), except under the conditions resulting from the latter paragraph.

It is also understood that those States which possess a large number of ports (situated on navigable waterways) which have hitherto remained closed to international commerce, may, at the time of the signing of the present Protocol, exclude from its application one or more of the navigable waterways referred to above.

The present Protocol shall be ratified. Each Power shall send its ratification to the Secretary-General of the League of Nations, who shall cause notice of such ratification to be given to all the other signatory Powers; these ratifications shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall remain open for the signature or adherence of the States which have signed the above-mentioned Convention or have given their adherence to it.

It shall come into force after the Secretary-General of the League of Nations has received the ratification of two States; provided, however, that the said Convention has come into force by that time.

It may be denounced at any time after the expiration of a period of two years dating from the time of the reception by the Secretary-General of the League of Nations of the ratification of the denouncing State. The denunciation shall not take effect until two years after it has been received by the Secretary-General of the League of Nations. A denunciation of the Convention on the Regime of Navigable Waterways of International Concern shall be considered as including a denunciation of the present Protocol.

Done at Barcelona, on _____, in a single copy, of which the French and English texts shall be authentic.

Sir Hubert LLEWELLYN SMITH (Great Britain).— This proposal, which emanated from the Committee on Navigable Waterways, is an extremely interesting one. I am glad to say that the British Delegation is able to give it its support. I presume the document will be examined by the Drafting Committee and the jurists as regards the provisions concerning denunciation and so forth. There are only two points I would like to suggest. The first is that in a protocol of this kind, which will apply only to some of the States represented at this Conference, and which will be the first international arrangement with regard to national waterways, I think it would be prudent to grant the signatory States the right to declare that their acceptance of the present Protocol does or does not include any or all of their colonies, overseas possessions and protectorates. They should also have the power of subsequently acceding to the Protocol on behalf of any Colony, overseas possession or protectorate not included in their first declaration; there should also be a similar power of denouncing the Protocol separately on behalf of any colony, overseas possession or protectorate. I have reason to believe that M. Lely agrees with this suggestion.

I should also like one small alteration made in the text. The last paragraph states that the Protocol may be denounced at any time after the expiration of two years. I have no objection to that; I think it is desirable to have a short period for so novel a Protocol. But I think we ought to follow the universal rule that denunciation shall take effect one year after it has been notified. I have consulted Sir Cecil Hurst, and he knows of no case in which it is necessary to wait two years after giving notice of denunciation. I strongly urge that the general practice should be adhered to in this case.

The PRESIDENT (speaking in French). — This appears logical.

M. LELY (Netherlands, Rapporteur; speaking in French). — I see no objection.

The PRESIDENT (speaking in French). — On the proposal of the British Delegation, the period of two years will be reduced to one year.

M. LELY (Netherlands, Rapporteur; speaking in French). — The Sub-Committee endeavoured to find as simple and equitable a formula as possible. I am in complete agreement with the British Delegate.

The PRESIDENT (speaking in French). — The statement will therefore be attached to the annexed Protocol. The Committee has deliberated and voted on all these matters. This being so, I put the Additional Protocol to the vote.

The additional Protocol was declared to be attached as an Annex to the Convention, under the conditions indicated.

ARTICLE 4

The PRESIDENT (speaking in French). — You will remember that we had reserved Article 4 (1). I think that an agreement has been reached as regards the wording of this article.

M. BARRAIL (France; speaking in French). — When I stated yesterday that I proposed a new text with the sole object of attaining clearness, I had before me the last instructions which M. Detœuf left me before his departure. From these I gathered that a compromise had been arrived at between him and the authors of other amendments with a view to introducing into the text of Article 4 more exact stipulations with regard to transshipment. I was subsequently informed that this matter had been discussed in Committee and that the compromise arrived at between M. Detœuf and the authors of other amendments had not been accurately reproduced in my text. I therefore approached the British Delegation and the Rapporteur, and I now state that, together with the British Delegation, I would support the text which will be read by the Rapporteur. I think this new formula will satisfy the whole Conference.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — Before reading this text I think it would be desirable to tell you in a few words the situation with regard to this paragraph. You will remember that the text which we have before us contains the words *...on the said system...*, which were inserted as the result of a Japanese amendment (2). At the time when the Committee was discussing the paragraph in question, the Japanese amendment had not been put in. The discussion was opened, but does not appear to me to have arrived at a final result. A certain hesitation became apparent. The question was perhaps not considered very deeply; that is why negotiations for an understanding were pursued, and we arrived at the following text :—

(2). When a natural system of navigable waterways of international concern which does not include waterways of the kind referred to in Article 1 a), separates or traverses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers or goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same State, in the course of a voyage effected without transshipment on the territory of either of the said States, involving a sea-passage or passage over a waterway of international concern which does not belong to the said system.

M. MATSUDA (Japan; speaking in French). — I greatly regret to have to speak at a moment when almost all the articles have been adopted. An amendment by the French Delegation was distributed yesterday. This amendment was said not to change in any way the original text which we adopted in Committee, but on examining the text which was said to be unchanged, I considered that it introduced fairly extensive modifications in the meaning of the original text. The amendment appears to extend very considerably the right of making exceptions. If this is so, we think that the principle of freedom of communications and transit, to which we attach great importance, has been compromised. I therefore propose that the original text adopted by the Committee be retained. I may add in explanation that the original text contained the words *...on the said system...*, which were inserted as the result of a proposal by our expert. M. Detœuf, who was absent at the time, later agreed to this addition; the French proposal has the effect of excluding these words, to which the Japanese Delegation attaches great weight, and which it would like to see retained.

(1) See p. 340.

(2) See p. 263.

M. REINHARDT (Austria; speaking in French). — The Japanese Delegate would like to keep the words *...on the said system...*, in order to avoid any narrowing down of the text proposed by the Committee. If it is an improvement to keep this text, or if it represents an advance in the direction of granting still wider freedom, then I support the proposal of the Japanese Delegate.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I am afraid that what the Japanese Delegate has said, instead of throwing light upon the question, has obscured it. The original text has been mentioned, but we must come to an understanding as to what is the original text. This article was drafted by a small Committee of the Sub-Committee, was discussed in Sub-Committee, was unanimously accepted by the Sub-Committee and was then submitted to the Committee. You know the manner in which articles are usually discussed. The first paragraph is at examined great length; when we arrive at the second we are somewhat fatigued and the discussion is not carried on so thoroughly. In any case, what was adopted was the text submitted to you without the words *...on the said system...*, and that is the "original text." Then the Japanese Delegate submitted an amendment to add these three words. The question was not very carefully considered. I do not remember whether a vote was taken on the amendment; in any case the discussion of the article was continued, and when the consequences of the amendment were realised it was found that it would have to be deleted. The question was brought up again, and we tried to find a conciliatory formula which would satisfy both parties. In this new text we propose what appears to me to meet the needs of the different countries, and I support it.

M. ADATCI (Japan; Chairman of the Waterways Committee; speaking in French). — In my capacity as Chairman of the Waterways Committee I think it is my duty to give some explanation. The text adopted by the Committee is that which the President has read, but it was adopted provisionally, and the plenary Conference may do as it pleases. I should like to say, however, that the text adopted by the Committee is the one which was read to you, and that the changes proposed in plenary Conference are the result of individual conversations without any official character.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — I agree with the Chairman of the Committee.

The PRESIDENT (speaking in French). — A text then was adopted in Committee, and it is therefore as a compromise that the Rapporteur is bringing before us now a text which was not adopted by the Committee.

M. MONTARROYOS (Brazil, Rapporteur; speaking in French). — As I pointed out, the text which you have before you is the text adopted by the Committee, but the second part was passed with the Japanese amendment, no special observation having been made on this amendment, although it alters the purport of the article.

M. TSANG-OU (China; speaking in French). — If I remember aright, the second part of this paragraph was adopted provisionally at the end of the meeting. The Chairman had authorised me to ask for some explanation of the words *the said system* (1). As this question particularly concerns my country, I should like to ask for some explanation.

We set out from the principle that on a national river a State has the right to reserve local transport traffic. When a river crosses two countries it was admitted that inter-State transport should be considered as local transport on condition that the two riparian States agreed to do so. In drafting the new article we again set out from this principle that when a river separates or traverses two countries, these two countries have the right, if they so agree, to reserve for themselves inter-State water transport.

(1) See p. 270.

The Committee's text read :—*to reserve to their flags by mutual agreement the transport of passengers and goods loaded at one port situated under the sovereignty or authority...*

According to the Japanese amendment the words *of this system* are to be substituted for the words *situated under their sovereignty or authority*.

I made a diagram in order to ascertain the purport of this change, and I became convinced that it entirely altered the meaning. The words *unless this transport...* to the end of the article, were intended to allow direct importation without transshipment, that is to say, that import traffic may arrive without transshipment from the port of commercial origin to the port of the international river. The amendment introduced by the Japanese Delegation allows, after departure from the port of commercial origin, an operation which would be carried out in a seaport of the country in which the international river is situated; the French amendment would have the effect of allowing direct importation from the port of commercial origin to a port of the international river. The Committee agreed to substitute the words *of this system* for the words *situated under their sovereignty or authority*. I think, however, that this was not at all the idea in Committee. In any case it very greatly changes the whole purport of the article.

M. MATSUDA (Japan; speaking in French). — I asked the President to put to the vote in the first place the text as adopted by the Committee and then the text proposed as a compromise.

The PRESIDENT (speaking in French). — The amendment must be put to the vote first; I cannot depart from that rule.

M. BARRAIL (France; speaking in French). — The Delegate of China has shown me the importance of the concession which I made to the Japanese view yesterday; nevertheless, in order to facilitate the voting, and to enable you to satisfy both parties, I accept the text as read by the Rapporteur. I hope that the Japanese Delegation will take note of the great sacrifice which the French Delegation is making, and will accept the text proposed to us as a compromise.

The PRESIDENT (speaking in French). — I will read the text again :

(2). When a natural system of navigable waterways of international concern which does not include waterways of the kind referred to in Article 1 a), separates or traverses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers or goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same State, in the course of a voyage effected without transshipment on the territory of either of the said States, involving a sea-passage or passage over a waterway of international concern which does not belong to the said system.

I put this text to the vote.

The text was adopted by 22 votes to nil.

The PRESIDENT (speaking in French). — I would point out to the Conference that an agreement has been arrived at, if I am not mistaken, on a proposal of the Roumanian Delegation in the following terms :

The reservation made in section 1, paragraph 2, of Article 4 does not refer to Articles 332 to 337 of the Treaty of Versailles, nor to the corresponding Articles in the other Treaties of Peace.

The Roumanian Delegation points out that these words are taken from the Report of the Rapporteur, and that in asking for them to be inserted in the Final Act it is not asking for anything in the nature of an innovation. Is there any objection to the insertion of these words ?

This was decided (1).

(1) See footnote p. 267, text inserted in the Final Act.

DECLARATIONS WITH REGARD TO THE CONVENTION

M. SCASSI (Greece; speaking in French). — I will take care not to misuse the short time remaining at the disposal of the Conference. I propose, therefore, to summarise very shortly, not the full argument which I had the honour to put before you in plenary meeting or in Committee, in favour of the claim upheld by the Greek Delegation, but one fundamental argument which, at this decisive moment, should claim the attention of all, in view of its wide purport and because it goes beyond the sphere of the question with which we are dealing.

I observe—and this impression has been corroborated during my conversations with some of my colleagues—that the point to which I refer has not perhaps been sufficiently brought into prominence. I will attempt to remedy this defect as simply as possible. The Convention on Navigable Waterways is the one contemplated in Article 338 of the Treaty of Versailles and in the corresponding articles in the other treaties of peace. On that point we are all agreed. The Conference which has to prepare this Convention has been summoned in pursuance and in execution of Article 23 e) of the Covenant of the League of Nations, which lays down that Members of the League will make provision to secure and maintain freedom of navigation. Hence, the Convention which we have to draw up must supersede the provisional regime established by the Treaty of Peace, and furthermore it is our duty *to secure and maintain freedom of communications*. How, and by what means, and on what bases must we do this? Instead of wasting time in making commentaries, would it not be better to ask the opinion of those who drew up the above-mentioned provisions? Would it not be better to address the authors of the Covenant, and say to them: You instruct us to conclude a Convention on Navigable Waterways of International Concern, and at the same time to secure and maintain freedom. Show us how you yourselves set about the task of applying this principle, and we shall then not fail to follow your example. The authors of the Covenant will then answer us in the words of Articles 332 and the following articles of the Treaty of Versailles and the corresponding articles in the other Treaties of Peace: On a footing of perfect equality,—no distinction shall be made between the subjects, property or flags of any of the other Powers and the nationals, property and flags of the riparian States. We believe that we have thus explained ourselves as simply as possible. It might, perhaps, be objected: But the provisions which you have taken from Article 332 and the following articles are very concise; they are contained in three articles, whereas the Convention which you ask us to draw up is long and complicated. Moreover, your provisions are only of a temporary nature, whereas ours are final. Do you not think that the authors of the Covenant would reply: Whether they be concise like ours, or full of detail like yours, whether they be temporary or final, they must in any case be based on the same foundations and interpreted within the same limits. This is the logical answer. The general plan of the work remains the same. It is our business to amplify and not to distort it. But in our Article 4, what has become of the principles laid down by the Covenant of the League of Nations? By three successive backward steps in the evolution of the wording of this article during the debates in Sub-Committee and Committee, it has been made to turn *perfect equality* into inequality. Instead of the exclusion of any distinctions, serious restrictions have been introduced. I am not referring merely to the terms of Article 4, or to the question of local transport, which concerns certain delegations, including that of Greece. The question is a much more important one. It is a question of the application of the principles laid down in the Covenant and in the Treaties of Peace.

I know that it is highly desirable to complete the edifice which the League of Nations proposed to set up,—to build it up in order that it may one day protect the manifold interests of all nations. I know that it is desirable to add new storeys; I am also aware that even the best architect is sometimes induced to alter his plans, even to abolish certain parts of them. But take care lest this should result in weakening the solidity of the building and its foundations. Our foundations are the Covenant and the Treaties of Peace. A blow of the pickaxe here and there may be enough to endanger the solidity of the foundations, and eventually the whole building. It is to these

blows of the pickaxe that I wish to draw your attention. To-day it is we who shall suffer from the putting into force of this Convention, because the Greek fleet on the Danube, amounting to 300000 tons of shipping (without counting several tugs) will be excluded from it. And this is what is called assuring freedom of navigation. Tomorrow, other departures from the Covenant of the League of Nations may be made, and other States will suffer. For this reason I say that the question which I now raise is outside the scope of the discussion of Article 4, and even of the General Convention on Navigable Waterways. It is to this point that I desired to draw your attention and that of the League of Nations, which will sedulously watch the carrying out of the terms of the Conventions drawn up by our Conference.

It now only remains for me to make the following declaration on behalf of the Greek Delegation :—

The Greek Delegation, being of opinion that the Convention designed, under the terms of Article 338 of the Treaty signed at Versailles, to supersede the regime relating to navigable waterways of an international character established by Articles 332 to 337 of that Treaty and by the corresponding articles in the other Treaties of Peace, cannot fulfil this object unless it is based on the same fundamental principles and conceived within the same limits as those indicated in the above-mentioned article, which faithfully reflect the ideas of the authors of the Covenant of the League of Nations as expressed in Article 23 e), as regards the manner of securing and maintaining freedom of communications;

And being of opinion, moreover, that the clauses of Article 4 of the Convention on navigable Waterways are contrary to the principles and provisions laid down in the Covenant and in the Treaties of Peace;

Hereby places on record its protest, and declares that it cannot accede to these clauses, nor to the Convention on Navigable Waterways; it therefore requests the Officers of the Conference to insert this Declaration in the Final Protocol and to communicate it to the Secretariat of the League of Nations, to the decision of which are subordinated the decisions of the Conference on Communications and Transit.

The PRESIDENT (speaking in French). — It is understood that the Greek Declaration will be inserted in the records.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — Before proceeding to vote on the Convention on Navigable Waterways as a whole, I think it is necessary for me to make a statement of principle regarding Article 4.

I propose to omit the second paragraph of the first section of this article, from the words *which are of national origin or nationalised* to the end; the whole of this part is merely an exception to the concession that this article is intended to make to local water transport traffic. My sole aim is to safeguard local transport against foreign competition. Some of us have been taxed with a want of liberality in this question, and with laying claim to rights not granted to all. Insinuations have been made to the effect that we wished to make reservations while the other delegations were opening all their rivers to freedom of transit and navigation and even to freedom of commerce. It is very easy for those who have no navigable rivers, and who already possess a well-developed river merchant-fleet, to speak in this way, but those who have navigable rivers and whose fleet is only in its infancy should reflect carefully before allowing themselves to be carried away by feelings of magnanimity. I consider that we have shown the greatest liberality towards Contracting States, and I therefore think that the reproach that we have not accepted the rules which may promote the progress of humanity and commerce between nations, is very much out of place. A poor man who possesses nothing, and who boasts that he has given away all his wealth for the progress of humanity, has no right to recommend others to follow his example and say : *I am opening my house to everybody; follow my example*. The reservations which we are making in order to preserve the existence of our river-fleet are very trifling in comparison with what we are giving humanity by accepting this Convention. We have opened many other rivers for the freedom and progress of humanity besides those which we are asked to open, where flows troubled and impure water. In the cause of freedom and progress we have opened all the arteries of our country and shed our blood to the last drop. How then can we be sparing with this water, which has only a material value ? We are opening our rivers, our seas, our ports, to all, because with us there is room for all, and we do not think that we are sinning against

liberalism by affording some protection to our budding river-fleet, in order to prevent it from being stifled by foreign competition. The objection is raised that this Article 4,—the other parts of which are favourable to us—and even that the whole Convention, contravenes Articles 332 to 337 of the Treaty of Versailles. Such a reproach seems to me uncalled-for. This Conference met to deal with these Conventions on the basis of the *Green Book*, as drafted under the auspices of the League of Nations, which has given it to us; and I think it is the Council of the League itself whose special duty it is to interpret the Treaty of Peace. Since the *Green Book* has been given to us by this authority, we have to do nothing, I consider, but conform to it, and we are entitled to conclude Conventions here without regard to the articles of the Treaty of Versailles.

The slight reservation which we ask—the omission of the last part of the second paragraph of section 1 of Article 4—will not prevent freedom of navigation any more than of transit; all our rivers, and even national rivers, remain open to free transit. But we are suspicious of the veto contained in Article 4, section 1, paragraph 2, particularly in the last words :—*in every case, however, in which greater freedom of navigation may have been already established in a previous act of navigation, this freedom shall not be reduced*. We are afraid that this paragraph may be given an interpretation such that the former Austrian usurpations on the Danube and its tributaries, in territory which is now Yugo-Slav, may be strengthened.

My Government gave me full powers to sign all Conventions which may result from this Conference; this means that it accepted in principle all the Conventions contained in the *Green Book*, with the exception of certain small restrictions which we made clear by means of amendments during the discussions on the various Conventions. But as in this case the original text of the *Green Book* has been altered for the worse, I do not consider myself authorised to give my signature to certain clauses in these Conventions, without first having been authorised by my Government to do so. I should like therefore to lay special emphasis on the fact that I could only vote for this Convention with a reservation regarding the second paragraph of section 1 of Article 4, and paragraph a) of section 5 of Article 9, nor could I sign the Convention without a fresh authorisation from my Government.

The PRESIDENT (speaking in French). — The reservation of the Serb-Croat-Slovene Delegation will be entered in the records, and also its reply to the observations of the Greek Delegate.

M. SCASSI (Greece; speaking in French). — The Serb-Croat-Slovene Delegate having replied to the Greek declaration, I now wish to say that I had no intention of reproaching anyone; I merely noted facts and interpreted texts.

M. PAVICHICH (Serb-Croat-Slovene State; speaking in French). — I should like to state that I was not referring to anyone in particular. As regards my reservations, I am afraid that they have been misunderstood; I will append my signature to the Convention, with a reservation regarding the two paragraphs which I mentioned.

M. PLANAS SUAREZ (Venezuela; speaking in French). — On behalf of the Venezuelan Delegation, I have stated several times, in the most formal manner, and I wish to repeat it, that as regards the obligation accepted by the Members of the League of Nations in accordance with Article 23 e) of the Covenant to *make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League*, Venezuela has confirmed these principles in practice in a most wide and liberal spirit, both in her laws and in her conventional law. I further wish to point out—and this remark deals with a fundamental principle—that the general Conventions referred to in Articles 338 and 379 of the Treaty of Versailles and the corresponding articles in other Treaties of Peace are not provided for in the Covenant of the League of Nations, and that Venezuela, in adhering to the Covenant, never intended to give her adherence to the Treaties of Peace. She can therefore accept nothing which is contrary to her international engagements, or which

is derived from treaties to which she is not a party. The legal principle *res inter alios acta* is very clear on this point.

I must also note that paragraphs 1 and 2 of Part 1 of the Resolution adopted on December 9th, 1920, by the Geneva Assembly, have not been scrupulously observed. Moreover, the exact interpretation of Article 23 e) of the Covenant leaves the Members of the League of Nations the task of regulating by conventions *inter se*, and by internal legislative measures, the general commercial regime, and the regime for communications and transit services,—at least this is the opinion of the Venezuelan Delegation.

I cannot, then, accede to the Draft Conventions and Statutes which have been discussed, and the less so—and I specially wish to emphasise this remark—as they prejudice the territorial sovereignty of States, their internal autonomy and their right of free public administration. I shall therefore abstain from voting on the present Draft, as I should have abstained if I had been present when the vote was taken on the other Drafts. However, my country will never refuse its share of help, however small, towards attaining the ideal of peace, brotherhood and fellowship which is so dear to all civilised peoples. My country will always hasten in response to *the appeal of nations which, while remaining individual, propose to work together for the peace and prosperity of the human race*, to quote the words of the President of the Swiss Confederation in his noteworthy speech at the opening of the First Assembly of the League of Nations.

The PRESIDENT (speaking in French). — The Venezuelan Delegate's declaration amounts to a refusal to sign the Convention. It will be entered in the records.

M. PLANAS SUAREZ (Venezuela; speaking in French). — Or to vote for it.

M. Charles Robert PUSTA (Esthonia; speaking in French). — Have we not reserved the second paragraph of Article 5?

The PRESIDENT (speaking in French). — Yes, and its adoption will be subject to the vote which will shortly be taken.

M. CARLIN (Switzerland; speaking in French). — Before the vote is taken I should like to make the following declaration with reference to the protests which have been expressed by M. Vallotton on behalf of the Swiss Delegation. I can only vote for the Convention on condition that it is understood that the vote reserves absolutely the provisions of paragraphs *b* and *c* of Article 1, and also those of sections 2 (second sentence) and 4 of Article 9. I should like to make clear that this reservation does not refer only to the vote which I am about to cast; it has another and a totally different character. Indeed, if my Government decided later to sign this Convention, it would have to renew these reservations, as it would not consider itself bound by the articles and provisions which I have mentioned. This, I may say in passing, is a procedure which has been employed on various occasions and in various conventions which followed the Second Peace Conference at The Hague. If the declarations made by the preceding speakers are to appear also in the Final Act, I ask that mine shall also appear there, and not merely in the records of this meeting.

The PRESIDENT (speaking in French). — It has always been admitted that to vote for a Convention implies sacrifices on both sides, and that it is impossible to sign a Convention subject to reservations. You can sign it or not. As the French proverb says, *Donner et retenir ne vaut*. I would therefore strongly urge M. Carlin, if he signs the Convention, to sign it without reservation. Besides, he is invoking a precedent which has not given satisfactory results, and in these circumstances I urgently beg all those who sign the Convention to sign it in its present form. It is of course understood that all explanations, commentaries and reservations will be entered in the records.

M. WINIARSKI (Poland; speaking in French). — The Polish Delegation declares that it accepts the Convention on Navigable Waterways, reserving for its Government complete freedom as regards the application and interpretation of Article 10 a).

M. CARLIN (Switzerland; speaking in French). — In view of the President's remarks on the subject of the reservation which I had notified with a view to voting affirmatively, I am obliged to say that, after the numerous precedents in the various conferences which followed the Peace Conference at The Hague, it cannot be maintained that a Convention may not be signed with reservations. However, if this is the case I shall not vote for the Convention, and I greatly regret this, because if my reservations had been accepted, I should have voted for it with pleasure.

The PRESIDENT (speaking in French). — The Formal Articles which represent the Convention properly so-called are the same as those in the Transit Convention.

Sir Cecil HURST (Great Britain; Chairman of the Jurists' Committee; speaking in French). — With the exception of a small addition to Article 8 (1), which has been accepted.

The PRESIDENT (speaking in French). — This refers to the reservation regarding works in course of execution after the Convention has been denounced.

ADOPTION AS A WHOLE, BY ROLL-CALL, OF THE CONVENTION AND STATUTE ON THE REGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN

The Articles and the Statute have been accepted, and we have now to vote on the whole, including the Formal Articles, which are identical with those on Transit, except for the point noted by Sir Cecil Hurst; the final text of the Preamble is reserved, and will be submitted to us this afternoon.

I will now put to the vote by roll-call the Convention and Statute as a whole.

Albania.	Yes	Japan	Yes
Austria	Yes	Latvia.	Absent
Bolivia.	Yes	Lithuania	Absent
Bulgaria	Yes	Luxemburg	Absent
British Empire	Yes	Norway	Yes
Chile	Yes	Netherlands	Yes
China	Yes	Panama	Yes
Colombia.	Absent	Paraguay	Yes
Cuba	Yes	Persia	Yes
Czecho-Slovakia.	Yes	Poland.	Yes
Denmark.	Yes	Portugal	Yes
Esthonia.	Yes	Roumania	Yes
France.	Yes	Spain	Yes
Finland	Yes	Sweden	Yes
Guatemala	Yes	Switzerland.	Abstention
Greece.	No	Serb-Croat-Slovene State.	Yes (under reservation)
Haiti	Absent	Uruguay.	Yes
Honduras.	Yes	Venezuela	Abstention
Italy	Yes		

The Convention as a whole was adopted by 29 votes to 1, with 2 abstentions.

The meeting adjourned at 2.25 p.m.

(1) See p. 356.

THIRTIETH MEETING OF THE CONFERENCE

(Tuesday, April 19th, 1921, at 5 p.m.)

ADOPTION OF PREAMBLE

The meeting opened with M. Hanotaux, President, in the Chair.

ADOPTION OF PREAMBLE

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The PRESIDENT (speaking in French). — I call upon Sir Cecil Hurst to speak on the Preamble to the Convention on Navigable Waterways.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — This afternoon the Jurists' Committee considered the Preamble of the Convention on the Regime of Navigable Waterways of International Concern. This Preamble begins with the list of High Contracting Parties,—Albania, Austria, and so on, and continues thus :

Desirous of carrying further the development as regards the international regime of navigation by waterway, which began more than a century ago, and which has been solemnly affirmed in numerous treaties;

Considering that general conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 e) of the League of Nations;

Recognising in particular that a fresh confirmation of the principle of freedom of navigation in a Statute elaborated by forty-two States belonging to the most diverse portions of the world, constitutes a new and significant stage towards the establishment of co-operation among States without in any way prejudicing their rights of sovereignty or authority;

Having accepted the invitation of the League of Nations to take part in the Conference at Barcelona which met on March 10th, 1921, and having taken note of the Final Act of such Conference;

Anxious to bring into force forthwith the provisions of the Statute relating to the regime of navigable waterways of international concern, which has there been adopted;

Wishing to conclude a Convention for this purpose, the High Contracting Parties have nominated as their plenipotentiaries.

The list of the plenipotentiaries of the High Contracting Parties will follow.

The PRESIDENT (speaking in French). — I venture to suggest a few alterations in this text.

In the first place, as we are speaking of High Contracting Parties, it would be better to use the feminine both in the first and fifth paragraphs of the Preamble, and to say *désireuses* and *soucieuses*. Moreover, it would be better to place the term *High Contracting Parties* at the beginning of the Preamble.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — I think it would be better to leave the term *the High Contracting Parties* at the end of the Preamble and keep the masculine gender, as has been done for the Transit Convention.

The PRESIDENT (speaking in French). — On this point, then, we will leave the text as proposed.

M. PIERRARD (Belgium; speaking in French). — Instead of saying at the beginning of the Preamble *the international regime of navigation by waterway*, I think we should say *navigation on internal waterways*.

The PRESIDENT (speaking in French). — In the third paragraph, I do not very much like the expression *belonging to the most diverse portions of the world*. I propose to substitute for it *the different portions of the world*.

In the same paragraph I do not see at the first glance to what the word *établie* refers.

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — It refers to the words *une étape nouvelle*.

The PRESIDENT (speaking in French). — Then we ought to say *accomplie* and not *établie* (1).

Finally, can we say that the High Contracting Parties have nominated their plenipotentiaries? What was done in the case of Transit?

Sir Cecil HURST (Great Britain, Chairman of the Jurists' Committee; speaking in French). — I think that the Transit text reads: *have appointed as (comme) their plenipotentiaries*.

M. PIERRARD (Belgium; speaking in French). — Or rather,—*ont désigné pour leurs plénipotentiaires* (2).

The PRESIDENT (speaking in French). — In any case we will adopt for the end of this Preamble the same words as those used for Transit.

I will put the Draft Preamble to the vote, subject to these alterations.

The Draft Preamble was adopted.

The CHAIRMAN (speaking in French). — The Preamble will be placed at the beginning of the Convention.

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The meeting adjourned at 8 p.m.

(1) English text unchanged.

(2) English text unchanged.

PART IV

DISCUSSION AND ADOPTION

OF THE

DECLARATION

RECOGNISING THE RIGHT TO A FLAG

OF STATES HAVING NO SEA-COAST

TWENTY-SEVENTH MEETING OF THE CONFERENCE

(Saturday, April 16th, 1921, at 6.15 p.m.)

The meeting opened with M. Gabriel Hanotaux, President, in the Chair.

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The CHAIRMAN (speaking in French). — We have still to consider the Draft Convention on the Right to a Flag of States having no Sea-coast. No report has been prepared on this question. As the question should of right be referred to a committee, I propose, if there is no objection, to transmit this Draft to the Committee on Navigable Waterways.

This was decided.

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The meeting adjourned at 7 p.m.

SIXTEENTH MEETING OF THE COMMITTEE ON NAVIGABLE WATERWAYS

(Sunday, April 17th, at 5.30 p.m.)

DRAFT CONVENTION ON RIGHT TO A FLAG OF STATES HAVING NO SEA-COAST

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

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DRAFT CONVENTION ON RIGHT TO A FLAG OF STATES HAVING NO SEA-COAST

The CHAIRMAN (speaking in French). — I now call the attention of the Committee to the following question, which is to a certain extent a constitutional one :—Are we competent to consider the Draft Convention on the Right to a Flag of States having no Sea-Coast ? I put this question to you because the Council of the League of Nations instructed me to make a statement on this subject to the Plenary Conference. Our President, M. Hanotaux, exhorted us yesterday to terminate all our labours. I ask you whether this Draft Convention should come within the sphere of our work, and whether we are competent to consider it now.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — The question is dealt with in an article of the Convention, but I think it would be better to make it the subject of a special declaration, in a separate convention or document signed by the delegates.

The CHAIRMAN (speaking in French). — It should be made the subject of a separate convention; on this, I think, we are all agreed. I am only raising a question of form.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — I think that we should deal with it.

The CHAIRMAN (speaking in French). — The only question which I put to you is whether this Draft Convention should be included in the programme of our Committee, which the President of the Conference has expressly begged us to bring to an end without delay.

M. KRBEC (Czecho-Slovakia; speaking in French). — If I remember aright, the question was raised in plenary meeting yesterday. Certain delegations had asked to enter upon the matter at once, but the President stated that a request had been sent to him to refer it to the Committee on Navigable Waterways. He therefore declined to deal with the question in plenary Conference before it had been considered by the Waterways Committee. Not only therefore are we competent, but it is our duty to solve the question to-day.

M. AVRAMOVITCH (Serb-Croat-Slovene State; speaking in French). — I also understood yesterday that the question was referred to the Committee in order that it might discuss it and submit a report to the Conference.

The CHAIRMAN (speaking in French). — Did you all infer this ? If so, there is no need for the statement which I intended to make.

Mr. H. O. MANCE (Great Britain; speaking in French). — The Chairman might make the statement and the report in one.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I was present at the meeting yesterday, and my impression was that the question had been referred to the Committee for consideration and for a report to be made.

The CHAIRMAN (speaking in French). — As we are all agreed on this point, we may at once proceed to discuss the Draft. It is the reproduction of a text adopted in Paris and accepted by Germany at the time when Czecho-Slovakia was constituted. This text referred only to the Allied and Associated States. The intention is now to extend its benefits to all States. The text of the Draft Convention as presented to us in the *Green Book* reads as follows (1) :—

The High Contracting Parties agree to recognise the flag flown by the vessels of any Contracting Party having no sea-coast, which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

That is the exact copy of one of the clauses of an article in the Treaty of Peace.

Mr. H. O. MANCE (Great Britain; speaking in French). — As we all agree as to the substance, we might give a unanimous vote.

The CHAIRMAN (speaking in French). — I put this Draft Convention to the vote.

The Convention was unanimously adopted.

The CHAIRMAN (speaking in French). — I am happy to see that the vote is unanimous, particularly on account of landlocked countries, for which we have the greatest sympathy.

I propose that M. Vallotton be appointed Rapporteur for the Draft Convention.

The proposal was carried.

Mr. H. O. MANCE (Great Britain; speaking in French). — As we have successfully terminated the main question, I should like to make a suggestion as regards form.

Certain difficulties are attendant upon the making of a Convention on this subject, and I think that we should leave to the Drafting Committee (such at least is the opinion of our legal adviser, and I think also of the other jurists here) the task of putting it into the form of a Declaration. It may be claimed that the right to a flag cannot be granted in a Convention which is open to denunciation. Legal difficulties might ensue. The vessels flying the flag of Switzerland, for example, might be considered as pirates. The opinion of the jurists is then that a declaration must be drafted, and this task could be left to the Drafting Committee.

M. VALLOTTON (Switzerland; speaking in French). — I whole-heartedly support this proposal. There are declarations which in international law play a rôle quite as

(1) For commentary on this Draft Convention, see p. 420.

important as do conventions. I do not know whether any other enclaved States see any objections to General Mance's proposal; as far as we are concerned we shall view with great satisfaction the drawing up of a solemn Declaration to this effect.

M. FERNANDEZ Y MEDINA (Uruguay; speaking in French). — To be signed by the delegates of all the States represented here.

M. KRBEČ (Czecho-Slovakia; speaking in French). — I second M. Vallotton's remarks; I fully share his view.

The meeting adjourned at 9 p.m.

EIGHTEENTH MEETING OF THE COMMITTEE ON NAVIGABLE WATERWAYS

(Monday, April 18th, 1921, at 4 p.m.)

REPORT ON SOLEMN DECLARATION OF BARCELONA CONFERENCE RECOGNISING RIGHT TO A FLAG OF STATES HAVING NO SEA-COAST

The meeting opened with M. Adatci, Vice-President of the Conference, in the Chair.

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REPORT ON SOLEMN DECLARATION OF BARCELONA CONFERENCE RECOGNISING RIGHT TO A FLAG OF STATES HAVING NO SEA-COAST

The CHAIRMAN (speaking in French). — I call upon M. Vallotton to read his Report on the Solemn Declaration of the Barcelona Conference recognising the Right to a Flag of States having no Sea-Coast.

M. VALLOTTON (Switzerland; speaking in French) *read his Report and the Draft Declaration.*

Declaration of the Right to a Flag of States having no Sea-Coast.

The Contracting States declare that they recognise the flag flown by the vessels of any member of the technical organisations having no sea-coast, which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

Done at Barcelona, April 1921.

The CHAIRMAN (speaking in French). — On behalf of the Committee I thank the Swiss Delegate very warmly for his admirable statement.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — I should like to ask whether it is possible to include in a text submitted for ratification the words *member of the technical organisations*, as this situation is not provided for in the Covenant? Perhaps it would be better simply to leave the words *Members of the League of Nations*, as previously proposed.

M. VALLOTTON (Switzerland; speaking in French). — We should then be lagging behind the terms of the Treaty of St-Germain itself.

M. Robert HAAS (Secretary-General of the Conference; speaking in French). — Then let us be still more liberal and delete the words *member of the technical organisations*.

The CHAIRMAN (speaking in French). — This proposal is carried.

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The meeting adjourned at 6.15 p.m.

THIRTIETH MEETING OF THE CONFERENCE

(Tuesday, April 19th, 1921, at 5 p.m.)

ADOPTION OF DECLARATION ON RIGHT TO A FLAG OF STATES HAVING NO SEA-COAST

The meeting opened with M. Hanotaux, President, in the Chair.

ADOPTION OF DECLARATION ON RIGHT TO A FLAG OF STATES HAVING NO SEA-COAST

The PRESIDENT (speaking in French). — The first item on our agenda is the international Declaration on the Right to a Flag of States having no Sea-Coast.

M. VALLOTTON (Switzerland, Rapporteur; speaking in French). — The flag is a symbol of sovereignty. It is generally admitted that sovereign States have, by virtue of this very sovereignty, the right to a maritime flag.

Authors such as Bluntschli, Perels and Bonfils, who have written on the question of the right to a maritime flag of enclaved States, have solved the question in the affirmative. Various treaties *inter partes* concluded by enclaved States, more particularly in South America, (for example between Uruguay and Bolivia), have recognised their right to carry on local transport traffic, and this implies the flying of a flag. On the Rhine, Switzerland already enjoys the right to a flag, a right of which she makes use even in maritime waters. The same probably applies to other enclaved States.

In the most recent treaties of peace (1) it has nevertheless been considered advisable to acknowledge this right to a flag for the sea-going vessels of States which do not possess a coast, making this right subject, however, to the formality of registering such vessels *at some one specified place* situated in the territory of this enclaved State. *Such place shall serve as the port of registry of such vessels.*

It would obviously be contrary to the principle of the equality of Members of the League of Nations to refuse to recognise the same right in the case of certain enclaved States, on the grounds that they may not have been parties to these treaties of peace. For this reason the Commission of Enquiry which sat in Paris to prepare the texts of the Convention now before our Conference, received favourably the proposal of the Swiss Delegation, which was intended to put an end to the abnormal situation resulting from the present application of Article 225 of the Treaty of Saint-Germain. As things stand at present, an enclaved State which is not a Member of the League of Nations, but which is a signatory to the Treaty of St. Germain, would enjoy a right from which enclaved States which are Members of this League would be debarred.

The Waterways Committee of the Barcelona Conference gave a most favourable reception to the proposal of the Commission of Enquiry. After having adopted unanimously and without discussion the juridical principle contained in the Draft Convention III *a*) of the *Green Book* (2), it considered that by means of an international declaration of a permanent character a higher juridical value could be secured for this recognition of the right to a flag of States which do not possess a sea-coast.

(1) Article 225 of the Treaty of Saint-Germain-en-Laye between the Allied and Associated Powers and Austria.

(2) For text see p. 461.

The Committee has, therefore, the honour unanimously to recommend the adoption of the following Declaration :

International Declaration of the Right to a Flag of States having no Sea-Coast.

The Contracting States declare that they recognise the flag flown by the vessels of any State having no sea-coast, which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

The PRESIDENT (speaking in French). — The Report and the Declaration were unanimously adopted by the Waterways Committee.

Sir Hubert LLEWELLYN SMITH (Great Britain). — I give my full support to this declaration. I should like to point out, however, that originally the expression *Contracting States* was used; but as this is a declaration, there can be no question of Contracting States, and I think it would be better to use the words,—*The undersigned, duly authorised...*

M. VALLOTTON (Switzerland; speaking in French). — I approve Sir Hubert Llewellyn Smith's proposal.

The PRESIDENT (speaking in French). — The observation of the British Delegate is quite correct. We will therefore put *The undersigned States, duly authorised*, instead of *The Contracting States*.

Does anyone ask to speak ?

I will put the Declaration to the vote by roll-call.

Albania	Yes	India	Yes
Austria	Yes	Italy	Yes
Belgium	Yes	Japan	Yes
Bolivia.	Absent ¹⁾	Latvia.	Yes
Brazil	Yes	Lithuania	Yes
British Empire	Yes	Luxemburg.	Absent
Bulgaria	Yes	Netherlands	Yes
Chile	Absent ¹⁾	Norway	Yes
China	Yes	Panama	Yes
Colombia.	Absent ¹⁾	Paraguay	Absent
Cuba	Yes	Persia	Yes
Czecho-Slovakia.	Yes	Poland.	Yes
Denmark.	Yes	Portugal.	Yes
Esthonia.	Yes	Roumania	Yes
Finland.	Yes	Serb-Croat-Slovene State.	Yes
France.	Yes	Spain	Yes
Greece.	Yes	Sweden	Yes
Guatemala	Yes	Switzerland.	Yes
Haiti	Yes	Uruguay.	Yes
Honduras	Yes	Venezuela	Absent

The Declaration was adopted, 34 voting for.

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The meeting adjourned at 8 p.m.

PART V

TEXTS RELATING TO NAVIGABLE WATERWAYS

AND TO THE

FLAG OF STATES HAVING NO SEA-COAST

SECTIONS I, II AND III. — Texts discussed by the Commission of Enquiry on Freedom of Communications and Transit.

SECTION IV. — Text prepared by the Commission of Enquiry and submitted to the General Conference on Communications and Transit (*Green Book*), with attached Report.

SECTIONS V AND VI. — Texts discussed at the Barcelona Conference.

SECTION VII. — Text of the *Convention and Statute on the Regime of Navigable Waterways of International Concern* adopted by the Conference.

SECTION VIII. — Text of the *Additional Protocol to the Convention on the Regime of Navigable Waterways of International Concern*.

SECTION IX. — Text of *Dratt Convention on the Right to a Flag of States not possessing a Sea-Coast*.

SECTION X. — Final text of the *Declaration recognising the Right to a Flag of States having no Sea-Coast*.

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

Secretariat.

SECTION I

DRAFT CONVENTION ON NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN

(Text based on notes of the deliberations of the Commission on the International Regime of Ports, Waterways and Railways of the Peace Conference and submitted for information by the Secretariat.)

(October 1919.)

I

Navigable Waterways of International Concern.

ARTICLE 1

The following are declared to be waterways of international concern and subject as such to the provisions of the following articles, viz :

(1) All parts of waterways or river systems which naturally provide several States with an outlet to the sea, with or without transshipment...

(1) All navigable parts, that is to say which naturally provide an outlet to the sea with or without transshipment, of waterways or river systems which provide several States with an outlet to the sea;...

together with lateral canals and channels built [either] (1) to duplicate or improve sections of such waterways or river systems which are naturally navigable [or to connect two sections of the same river which are naturally navigable].

(2) Waterways, canals, or parts of waterways and canals described as such in any international agreements or treaties of which the interested riparian States are Contracting Parties.

II

Freedom of Navigation.

ARTICLE 2

In the exercise of navigation, the nationals, property and flags of all nations shall be treated in every respect with perfect equality, no distinction being made between nationals, property and flags of riparian and non-riparian States, and no exclusive rights of navigation being granted to companies or to private individuals. No restrictions shall be placed on the free movement of persons and vessels other than those arising under police, customs, medical, emigration and immigration regulations, and those governing the import and export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

(1) Phrases inserted between brackets [] are either those with regard to which differences of opinion arose at meetings of the Commission on the International Regime of Ports, Waterways and Railways, or those which were not included in texts officially submitted to the Commission.

ARTICLE 3

All riparian States shall be entitled to prohibit foreign ships from carrying passengers and goods by regular services between their ports [with the exception of cases where this right of transport has already been established by a convention or by custom].

No riparian States refusing to foreign vessels the right to carry passengers and goods by regular services between their ports may enjoy this same right between the ports of the other High Contracting Parties on any navigable waterway declared to be of international concern.

III

Tolls and Dues.

ARTICLE 4

[Where such charges are not precluded by any existing conventions] tolls varying on different sections of a navigable waterway may be levied on vessels using such navigable channel or its approaches. They are intended solely to cover equitably the cost of maintaining in a navigable condition, or of improving, the navigable waterway and its approaches, or to meet expenditure incurred in the interests of navigation. The scale thereof shall be calculated in proportion to such expenses, and the schedules posted up in the ports. Such tolls and dues shall be levied in such a manner as to render any detailed examination of cargo unnecessary, except in cases of suspected fraud or contravention.

ARTICLE 5

The transit of vessels, passengers and goods on the navigable waterways referred to in Article 1 shall be effected subject to the conditions fixed by the Convention relating to freedom of transit.

When the two banks of a waterway of international concern form part of the same State, goods in transit can be placed under seal or in the charge of Customs agents. In cases where the waterway forms a frontier line, goods and passengers in transit shall be exempt from all customs formalities; the loading and discharge of goods, and the embarkation and disembarkation of passengers, shall only take place in the ports named by the riparian State.

ARTICLE 6

No tolls or dues of any kind other than those provided for in the present regulations shall be levied anywhere throughout the course of navigable waterways of international concern or at their outlets.

Nothing contained in this provision shall prevent the fixing by the riparian States of customs and local octroi dues or taxes on consumable commodities, or the creation of uniform and reasonable tolls levied in the ports according to public tariffs, for the use of cranes, elevators, quays, warehouses, etc.

IV

Works.

ARTICLE 7

In default of any special organisation for carrying out the works connected with the upkeep and improvement of the portion of a navigable system declared to be of international concern, each riparian State shall be obliged to take, as far as

expedient, all necessary measures with a view to removing any obstacle or danger to navigation and to ensuring the maintenance of good conditions of navigation.

Should any State neglect to comply with this stipulation any riparian State, or any State represented on the International Commission referred to in Article 11, if any, may appeal to the Court instituted for the purpose in connection with the League of Nations.

ARTICLE 8

The same procedure shall be adopted in the case of a riparian State undertaking any works capable of hindering navigation over any section declared to be of international concern. The Court mentioned in the preceding article shall be entitled to demand the suspension or abolition of the said works, making due allowance in its decisions for all rights in connection with irrigation, water-power, fisheries, and other national interests (which, in the event of agreement being arrived at by all the riparian States on the subject, shall be given priority over the requirements of navigation).

Appeal to the Court of the League of Nations shall not be suspensive.

ARTICLE (9)

[All riparian States shall grant the necessary facilities for the execution by the competent authority of works of every description connected with a navigable waterway of international concern and approved by the International Commission, if any, for the said waterway.]

V

Administration of Navigable Waterways declared to be of International Concern.

ARTICLE 10 [9]

Subject to any stipulations to the contrary included in treaties or agreements of which all the riparian States concerned are Contracting Parties, the administration of a navigable waterway of international concern shall be entrusted to the riparian States concerned.

ARTICLE 11 [10]

In the event of the administration of a navigable waterway of international concern being entrusted to an International Commission in virtue of special agreements or treaties, such Commission shall be subject to the authority of the League of Nations, to which it shall make an annual report.

ARTICLE 12 [11]

The International Commissions referred to in the preceding article shall possess the following powers :

(1) That of settling and causing to be carried out the works indispensable to the improvement and development of the navigability of the waterway and the upkeep thereof in cases in which such works have not been executed by the riparian States themselves;

(2) That of fixing and levying tolls and dues;

(3) That of drawing up river police regulations, which, as far as circumstances may permit, shall be uniform throughout the course of the navigable waterway;

(4) That of superintending the strict observance of the regulations;

(5) That of nominating the Inspector-in-Chief of Navigation, who shall exercise authority on behalf of the Commission over the whole course of the navigable waterway and over vessels of all nations;

(6) That of sanctioning the appointment of local inspectors of navigation nominated by the riparian States.

ARTICLE 13 [12]

In the event of an International Commission existing, and of no provision to the contrary appearing in any special Convention, each riparian State shall be entitled to carry out itself any works which it may consider necessary on sections of the waterway of international concern over which it exercises sovereignty, with a view of ensuring the upkeep of, and effecting improvements in, river traffic. Except however with regard to facilities in local ports, no additions shall be made to existing tolls and dues fixed by reason of such works unless previously approved by the Commission.

VI

Navigation Police

ARTICLE 14 [13]

Riparian States shall retain their right of sovereignty over those parts of a navigable waterway which flow through their territory, the sole restrictions being those arising out of the present regulations.

Should an International Commission exist, they shall have power to appoint local Navigation Inspectors for the sections of the navigable waterway within their territory and shall cause the police regulations drawn up by such Commission to be carried out.

ARTICLE 15 [14]

Should an International Commission exist, all offences against the navigation regulations enacted by it shall be judged in the first instance or finally according to the amount of the fine fixed by such regulations by the local Inspectors of Navigation. When an appeal is allowed, it shall be brought before the proper Tribunal of the riparian State in question. In that event each riparian State undertakes to submit regulations fixing uniform penalties and nominating the Appeal Tribunals which shall deal with all offences committed within their jurisdiction. Under these regulations all such offences shall be deemed to have been committed within the territory where the offender shall be for the time being.

ARTICLE 16 [15]

Disputes of a civil or commercial nature which may arise in connection with navigation shall at the choice of the plaintiff be brought either before the court of the defendant's place of domicile, or before that of the home port of the vessel, or before the court of the district in which the occurrence giving rise to the dispute shall have taken place. The dispute shall be judged according to the national law of the court chosen and the procedure shall be that applicable under such law.

VII

Application of the present Convention.

ARTICLE 17 [16]

Disputes arising between riparian or non-riparian States respecting the application of this Convention shall in the first instance be brought before the International Commission, if any. Should no such International Commission exist or should the findings of such Commission not be accepted by one of the States concerned, any such State may appeal to the Court instituted for this purpose in connection with the League of Nations.

ARTICLE 18 [17]

Any State refusing to comply with the findings of the Court instituted by the League of Nations shall cease to benefit by the provisions of the present Convention or of the Conventions respecting freedom of transit and ports of international concern.

ARTICLE 19 [18]

The rights and obligations of neutrals or belligerents in time of war shall in no wise be affected by the provisions of the present Convention.

ARTICLE 20 [19]

[The provisions of the present Convention shall not be interpreted as in any way restricting any existing international rights whatsoever.]

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT
—
Secretariat.

SECTION II

DRAFT CONVENTION ON THE INTERNATIONAL REGIME
OF NAVIGABLE WATERWAYS.

(Presented for information by the Secretary-General for discussion in second reading.)

(February 21st, 1920.)

Preamble.

The High Contracting Parties, being desirous of applying to the waterways subject to their sovereignty or placed under their control the principle of freedom of communications, in conformity with Article 23 (e) of the Covenant of the League of Nations, and having therefore agreed to grant to the flags of all the Contracting Powers, on the said waterways, the free exercise of navigation on a footing of perfect equality, with the exception however of *petit cabotage* as to which they reserve to themselves the right of granting privileges in favour of their own flag [or in any other manner], do lay down the provisions following concerning the regime of such of these waterways as are considered to be of international concern.

I

Waterways of International Concern.

ARTICLE 1

The following are declared to be of international concern and subject to the provisions of the following articles, viz :—

1) All naturally navigable parts of watercourses (whether main streams or tributaries) which naturally provide more than one State with access to the sea, with or without transshipment from one vessel to another, together with all lateral canals and channels constructed in order to duplicate such sections of watercourses by remedying their defects, or to improve them.

2) Watercourses, canals and parts of watercourses and other navigable waterways declared to be of international concern or to be placed under the regime defined by the present convention, in international agreements or treaties to which the interested riparian States are contracting parties.

A continuous network of parts of watercourses, channels or lateral canals which are deemed of international concern, shall be considered as forming a river-system of international concern.

II

Freedom of Navigation.

ARTICLE 2

Subject to the provisions contained in Article 4, each of the High Contracting Parties shall grant, on those parts of waterways specified above which may be placed under its sovereignty or control, free exercise of navigation to the vessels flying the flag of any one of the other Contracting Parties.

ARTICLE 3

In the exercise of such navigation, and subject to the said provisions, the subjects, property and flags of all the Contracting Parties shall be treated in every respect on the basis of absolute equality, no distinction being made between the subjects, property and flags of the various riparian States, including the riparian State under whose sovereignty or control the part of a waterway in question may be placed, or between the subjects, property and flags of riparian and non-riparian States; it being understood that consequently no exclusive rights of navigation shall be granted on such waterways to companies or to private individuals, and that in so far as concerns the application of the present article the High Contracting Parties shall recognise the flag of vessels or boats belonging to any contracting party not possessing a sea-coast, when they are registered in the one place situated in its territory selected to take the place of the port of registration for such vessels and boats.

ARTICLE 4

Each of the High Contracting Parties reserves to itself the right of disposing, in favour of its own flag [or in any other manner] of the right of free exercise of navigation between its own ports; nevertheless, upon the river systems specified in Article 1 which have been or may be the subjects of special international treaties or agreements concerning navigation, to which Powers other than the riparian Powers of the international river system have been or may be contracting parties, such reservation may only be exercised if it has been or is in future to be explicitly sanctioned in the Navigation Act of the river-system in question.

ARTICLE 5

High Contracting Parties who are co-riparian States of any given river system of international concern reserve to themselves the right of refusing, by common consent, the free exercise of navigation between the ports of the said river system to the flags of any or all of the non-riparian contracting parties; nevertheless, this provision does not apply to those river systems specified in Article 1 which have been or may be the subject of special international treaties or agreements concerning navigation to which Powers other than the riparian Powers of the international river system have been or may be contracting parties.

ARTICLE 6

On the waterways provided for in Article 1 and placed under its sovereignty or control, each of the High Contracting Parties will maintain all existing rights of issuing regulations and of taking the necessary measures for the general policing of the country by the application of laws and regulations with regard to customs, sanitation, emigration, immigration and the import and export of prohibited goods; it being understood that these regulations and measures, which shall be reasonable and shall be applied with perfect equality to the subjects, property and flags of every one of the Contracting Parties, including the Contracting Party by which they are issued, must not unduly hamper the free exercise of navigation.

III

Dues and Charges.

ARTICLE 7

No dues of any kind based solely on the fact of navigation shall be levied anywhere throughout the course of navigable waterways of international concern, or at their

outlets; dues can only be levied on the vessels or boats using the waterway if they are in the nature of payments for services rendered and intended solely to cover equitably the cost of maintaining the waterway in a navigable condition, or of improving it and the approaches to it, or to meet expenditure incurred in the interests of navigation. The tariffs shall be calculated in proportion to such expenses, and the schedules posted up in the ports. These dues shall be levied in such a manner as to render unnecessary any detailed examination of cargo, except in cases of suspected fraud or contravention, and to facilitate international traffic as far as possible, both as regards their amount and the manner in which they are applied.

IV

Transit. — Imports. — Exports. — Ports.

ARTICLE 8

The transit of vessels, boats, passengers and goods on waterways of international concern shall be effected under the conditions fixed by the Convention on Freedom of Transit, with the following additional provisions :

When the two banks of a waterway of international concern form part of the same State, no customs formalities may be imposed on goods in transit, with the exception that they may be placed under seal or in the charge of a customs agent. When a waterway of international concern constitutes the frontier between two States, passengers and goods in transit shall be exempt from all customs formalities, except in cases where there are good reasons for the maintenance of formalities already in force, provided they do not interfere with navigation.

ARTICLE 9

Subject to the provisions contained in Article 4, the subjects, property and flags of each of the High Contracting Parties shall, in all the ports situated on a waterway of international concern, enjoy equality of treatment, in all respects, with that accorded to the subjects, property and flags of the riparian State under whose sovereignty or control the port is placed. In particular, and subject to the same reservation, the vessels of the said Contracting Parties shall be entitled to transport goods of any description and passengers to or from any ports situated on a waterway of international concern to which national vessels have access, in conditions which shall not be more onerous than those applied in the case of national vessels; they shall be treated on a footing of equality with national vessels, as regards port and wharf facilities and charges of every description, including facilities for stationing, loading and unloading, and for tonnage, harbour, pilotage, lighthouse, quarantine and all analogous dues and charges of whatsoever nature, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of every kind. All customs and local octroi dues or taxes on consumable commodities levied on imports and exports through the said ports must be uniform, irrespective of whether the vessel carrying or to carry the goods flies the flag of the national State or that of any one of the Contracting Parties. All those facilities which would be granted by the High Contracting Parties on other land or water routes or in maritime ports for the import or export of goods shall be likewise accorded to their import and export on the waterway of international concern.

V

Works.

ARTICLE 10

The High Contracting Parties recognise that, in default of any special organisation for carrying out the works connected with the upkeep and improvement of a waterway

of international concern, each riparian State of a river system of international concern has the right of requiring that, failing unanimity between all the co-riparian States as to expressly giving priority to the interests of irrigation, water-power, fisheries and other national interests, over those of navigation, none of the said riparian States shall undertake any works liable to hinder navigation, but that every riparian State shall take the necessary measures to remove any obstruction or danger to navigation, to ensure the maintenance of good conditions of navigation, and carry out or cause to be carried out on its territory any ordinary works for the improvement of the river system, subject to a proportional distribution of expenses based on the varying degrees of interest in such works.

Each of the Contracting Parties signatory to the present convention is deemed to have the same right with regard to all the riparian States of a river system of international concern which has been or may be the subject of special treaties or agreements concerning navigation, to which Powers other than the riparian Powers of the river system in question have been or may be Contracting Parties. In such a case the interests of navigation shall be reconciled as far as possible with those of irrigation, water-power, fisheries, and with other national interests.

VI

Administration.

ARTICLE 11

Subject to any stipulations to the contrary in special agreements or treaties, the administration of waterways of international concern will be carried on by each one of the riparian States under whose sovereignty or control the waterway is placed, and as far as that sovereignty and that control extend. In particular, each of the said riparian States is both entitled and bound within the above limits to draw up regulations for the navigation of the waterway, and to superintend their application; such regulations to be established and applied in a manner to facilitate the free exercise of navigation, in the conditions provided for in the present convention; in particular the method of procedure for instituting proceedings, prosecutions and different measures against acts committed to the prejudice of navigation shall be as prompt as possible.

Moreover, the great desirability in nearly all cases of an understanding between riparian States of the same international waterway, for its joint administration, is recognised by the High Contracting Parties, particularly when a waterway of international concern forms the boundary between two States; the desirability is similarly recognised of as great a degree of uniformity in the navigation regulations throughout the course of one and the same waterway, as is compatible with local technical conditions.

ARTICLE 12

In the event of the administration of a waterway of international concern being entrusted, by virtue of one of the special agreements or treaties referred to in the preceding article, to an international commission composed of representatives of States other than the actual riparian States concerned, such a commission shall come under the category of the organisations provided for in Article 24 of the Covenant of the League of Nations. It shall take into consideration solely the interests of navigation, and, subject to the stipulations contained in Article 10, shall exercise the following powers :

1) It shall draw up regulations for navigation which, as far as circumstances may permit, shall be uniform throughout the course of the waterway of international concern, and shall superintend their application;

2) It shall inspect or cause to be inspected, periodically, the whole course of the waterway, and shall inform the riparian States of any action which may be advisable for the upkeep of the works and the maintenance of good navigation conditions;

- 3) It shall be furnished by all the riparian States with official reports of all schemes for the improvement of the waterway, and shall express an opinion concerning them;
- 4) It shall be entitled to approve and standardise the method of levying dues and charges authorised by the provisions of Article 7 of the present convention;
- 5) It will address to the League of Nations an annual report on its labours.

VII

Miscellaneous Provisions.

ARTICLE 13

The stipulations contained in the present convention shall be valid in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

ARTICLE 14

It must be understood that subject to any stipulation to the contrary contained in a special treaty or agreement concerning any given waterway, the navigation of vessels of war, or of those connected with the policing or administration of the river, or in general with the exercise of any public authority in the name of a sovereign State, is in no way affected by the present convention.

ARTICLE 15

Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present convention, any agreement concerning navigation on any of the waterways specified in Article 1, by which that State, or itself, would receive benefits not extended to all the other High Contracting Parties, in the conditions provided for in the present convention.

ARTICLE 16

The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of still greater facilities granted for the free exercise of navigation, on any waterway of international concern, conditional on their being compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties, as defined in and applied to the present Convention; or, on the other hand, the prohibition of the granting of such further privileges in the future.

ARTICLE 17

All disputes as to the interpretation and application of the present Convention shall, failing any special agreement for the establishment of a particular method for settling such disputes between the States signing such agreement, and failing also a direct understanding between the parties concerned, be brought in the first place before the International Commissions referred to in Article 12, if one exists for the waterway in question. Should no such International Commission exist, or should its decisions prove unacceptable to any one of the States, any interested State may lay the case before the Permanent Communications and Transit Committee, and may should occasion arise appeal to the Permanent Court of International Justice, under the procedure laid down in the resolution of the Assembly of the League of Nations, under date..., and in the Scheme for the Organisation of the General Conference and of the Permanent Communications and Transit Committee, under date...

All disputes as to the carrying out of works detrimental to navigation shall be dealt with with the utmost promptitude, the Permanent Communications and Transit Com-

mittee and the Permanent Court of International Justice having the power, without prejudicing the final opinion and verdict on the basic cause of dispute, of pronouncing a provisional judgment, to the extent of prescribing the suspension or immediate stoppage of the work in question.

ARTICLE 18

Should any one of the High Contracting Parties fail to comply with the findings of the Permanent Communications and Transit Committee, or, if appeal has been made to the Permanent Court of International Justice, with the verdict of that body, the other High Contracting Parties may take any action considered applicable by the opinion of the Committee or the verdict of the Court.

VIII

Provisions for Ratification, Dates of coming into force, Denunciation.

COMMISSION
OF ENQUIRY
ON
FREEDOM OF COMMUNICATIONS
AND TRANSIT

Secretariat.

SECTION III

DRAFT CONVENTION ON THE INTERNATIONAL REGIME
OF NAVIGABLE WATERWAYS

(Presented by the Secretary-General for discussion in third reading.)

(March 25th, 1920.)

The General Communications and Transit Conference of the League of Nations,
Called together at... by...

After having decided to adopt various proposals relating to the international regime of navigable waterways, the second item on the agenda at the meeting of the Conference held at... and...

After having decided that these proposals should be drawn up in the form of a draft international Convention,

Adopts the draft convention to be ratified hereafter by the Members of the League of Nations, as also by any other Powers to whom it may have been communicated by the Council of the League of Nations; those among the said Members and Powers who ratify the present document being known hereafter as High Contracting Parties.

PREAMBLE

The High Contracting Parties, being desirous of applying to the waterways placed under their sovereignty or authority the principle of freedom of communications, in conformity with Article 23 (e) of the Covenant of the League of Nations, do lay down the provisions of the present Convention concerning the regime of those waterways specified as being international in Article 1 below.

They further, as to waterways not specified as international, declare their intention of being inspired by the same principle, by applying to them notably a regime absolutely free from discrimination between the High Contracting Parties on account of their flag; it being nevertheless understood that this declaration does not detract from their right on these waterways either on the one hand of reserving to their national or any other flag the practice of local transportation of passengers and goods between national ports, as also towage, or on the other hand of reserving, by particular agreements, the local transportation of passengers and goods between national and foreign ports situated on the same river system, for the benefit either of the flags of the riparian States of that system collectively, or of the flags of certain of their number, and is not to be interpreted as implying in any way, on the one hand the withdrawal of any still greater facilities for the free exercise of navigation on the said waterways, which may be in force at the time, conditional on their being compatible with the principle of equality of flag as thus interpreted; nor on the other hand the prohibition of the granting of such further privileges in the future.

ARTICLE 1

In applying the present convention, the following are declared to be "international waterways" :

1) All parts which are accessible naturally from the sea, with or without transshipment from one vessel to another, of a waterway (whether the main stream or a tributary)

which in its course, naturally accessible from the sea, divides or crosses different States, as also all waterways which being accessible naturally from the sea connect such waterways with the sea. All lateral canals constructed in order to remedy the defects of the said waterways and parts of waterways shall be assimilated to the waterways and parts of waterways thus defined;

2) Watercourses, canals or parts of watercourses or of canals and navigable waterways assimilated thereto, expressly declared as being placed under the regime defined by the present convention, in agreements, treaties or special acts, with the consent, in particular, of the State or States under whose sovereignty or authority the watercourses, canals, parts of watercourses or canals or navigable waterways in question are placed.

ARTICLE 2

Subject to the provisions contained in Articles..., each of the High Contracting Parties shall grant free exercise of navigation to the vessels flying the flag of any one of the other High Contracting Parties, on these parts of waterways specified above which may be placed under its sovereignty or control.

ARTICLE 3

In the exercise of such navigation, and subject to the said provisions, the subjects, property and flags of all the Contracting Parties shall be treated in every respect on the basis of absolute equality, no distinction being made between the subjects, property and flags of the various riparian States, including the riparian State under whose sovereignty or authority the part of a waterway in question may be placed, or between the subjects, property and flags of riparian and non-riparian States; it being understood that consequently no exclusive rights of navigation shall be granted on such waterways to companies or to private individuals, and that in so far as concerns the application of the present article the High Contracting Parties shall recognise the maritime flag of vessels or boats belonging to any Contracting Party not possessing a sea-coast, when they are registered in the one place situated in its territory selected as the port of registration for such vessels and boats.

ARTICLE 4

Nevertheless, where necessitated by the existence of a combination of exceptional economic, technical and topographical circumstances, those among the High Contracting Parties who are co-riparian States of one and the same international waterway may, by common consent, refuse the right to carry out local transport of passengers and goods, between the ports situated on this waterway, to the flags of any or all of the non-riparian Contracting Parties.

ARTICLE 5

On the waterways provided for in Article 1 and placed under its sovereignty or authority, each of the High Contracting Parties reserves to itself all existing rights of issuing regulations and of taking the necessary measures for the general policing of the country by the application of laws and regulations with regard to customs, sanitation, emigration, immigration and the import and export of prohibited goods, it being understood that these regulations and measures, which shall be reasonable and shall be applied with absolute equality to the subjects, property and flags of every one of the Contracting Parties, including the Contracting Party by which they are issued, must not unduly impede the free exercise of navigation.

ARTICLE 6

No dues of any kind other than dues in the nature of payment for services rendered and intended solely to cover equitably the cost of maintaining the waterway

in a navigable condition, or of improving it and its approaches, or to meet expenditure incurred in the interests of navigation, shall be levied anywhere throughout the course of international waterways or at their outlets. The tariffs shall be calculated in proportion to such expenses, and the schedules posted up in the ports. These dues shall be levied in such a manner as to render unnecessary any detailed examination of cargo, except in cases of suspected fraud or contravention, and to facilitate international traffic as far as possible, both as regards their amount and the method of their application.

ARTICLE 7

The transit of vessels, passengers and goods on international waterways shall be effected under the conditions fixed by the convention on Freedom of Transit, with the following additional provisions :

When the two banks of an international waterway are within the same State, no customs formalities may be imposed on goods in transit, with the exception that they may be placed under seal or in the custody of a customs agent;

When an international waterway constitutes the frontier between two States, vessels, passengers and goods in transit shall be exempt from all customs formalities, except where for valid reasons customs formalities may be carried out at a point in the part of the river which forms the frontier, but such formalities must not interfere with the facilities of navigation.

The dues provided for and authorised in Article 3 of the Convention on Freedom of Transit shall not apply to the transit of vessels, passengers and goods on these international waterways.

ARTICLE 8

The subjects, property and flags of all the Contracting Parties shall enjoy absolute freedom in using the ports situated on an international waterway. In this connection and in all respects they shall, subject to the stipulations contained in Articles... be treated on a footing of absolute equality, no distinction whatever being made between the subjects, property and flags of the various riparian States, including the riparian State under whose sovereignty or authority the port in question is placed, or between the subjects, property and flags of riparian as opposed to non-riparian States.

The equipment of the ports situated on an international waterway, and the facilities granted to navigation in those ports, shall be available for public use to such reasonable degree as corresponds with the free and effective exercise of navigation.

All customs and local octroi dues or taxes on consumable commodities levied on imports and exports through the said ports must be uniform, irrespective of whether the vessel carrying or to carry the goods flies the flag of the national State or that of any one of the Contracting Parties. In the absence of some unusual cause arising out of economic needs, which would reasonably justify an exception being made, all those facilities granted by the High Contracting Parties on other land or water routes or in maritime ports for the import or export of goods shall be likewise accorded to their import and export on the international waterway.

ARTICLE 9

In default of any special organisation or agreements for the upkeep and improvement of an international waterway, each of the riparian States is bound both to abstain from any action likely to impede navigation, and also to take any necessary measures to remove obstructions and dangers to navigation, and to carry out, or cause to be carried out any works necessary for the upkeep of the waterway, subject to an allocation of expenses between the States concerned, proportionate to their respective interest in the said works.

Should the States making the demand offer to defray the expenses, each riparian State is likewise bound, in the same conditions, and in the absence of valid reason to

the contrary, based on other national interests, such as in particular the maintenance of the ordinary hydraulic regime, the needs of irrigation or of utilisation of hydraulic power, to carry out or cause to be carried out any works for the improvement of the waterway.

The stipulations of this article may on no account be invoked against a riparian State which can prove that it is acting or has acted with the unanimous consent of all the States riparians of the international waterway or represented on the international commission for that waterway, if one exists.

ARTICLE 10

Subject to any stipulations to the contrary in special agreements or treaties, the administration of international waterways will be carried on by each one of the riparian States under whose sovereignty or authority the waterway is placed, and as far as that sovereignty and authority extend. In particular, each of the said riparian States is both entitled and bound within the above limits to draw up a scheme for the regulation of navigation on the waterway, and to superintend its application; the regulations to be established and applied in a manner to facilitate the free exercise of navigation, in the conditions provided for in the present convention : more especially the method of procedure for instituting proceedings, prosecutions and the repression of acts committed to the prejudice of navigation shall be as prompt as possible.

Further, the great desirability, particularly where the waterway forms the boundary between two States, of an understanding between riparian States of the same international waterway regarding its administration is recognised by the High Contracting Parties and especially of the formulating of navigation rules throughout the course of the waterway, as nearly uniform as possible compatible with local conditions.

ARTICLE 11

In the event of certain functions being entrusted by virtue of one of the special agreements or treaties referred to in the preceding article, to an international commission composed of representatives of States other than the actual riparian States concerned, such a commission shall come under the category of the organisations provided for in Article 24 of the Covenant of the League of Nations; it being thereby understood that it will exchange with the various sections of the League of Nations any useful information, and will submit an annual report to the League of Nations.

The powers of the commissions provided for in the preceding paragraph shall be determined by the Act of navigation of each waterway, and must include at least the following :

- 1) The commission shall be entitled itself to draw up such navigation regulations as it thinks fit, and notification of all other navigation regulations shall be made to it.
- 2) It shall inspect or cause to be inspected periodically the whole course of the waterway, and shall inform the riparian States of any action which may be advisable for the upkeep of the works and the maintenance of good navigation conditions;
- 3) It shall be furnished by all the riparian States with official reports of all schemes for the improvement of the waterway;
- 4) Where the act of navigation does not include special regulations for the levying of dues and charges, the commission shall be entitled to approve the method of levying dues and charges in applying the provisions of Article 6 of this convention.

ARTICLE 12

The stipulations contained in the present convention shall be valid in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals.

ARTICLE 13

It must be understood that subject to any stipulation to the contrary contained in a special treaty or agreement concerning any given waterway, the navigation of vessels of war, or those connected with the policing or administration of the river, or in general with the exercise of any public authority in the name of a sovereign State, is in no way affected by the present convention.

ARTICLE 14

Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present convention any agreement relating to navigation on an international waterway with conditions such that a similar agreement would be considered as contravening the terms of the preceding articles, if it were concluded between Contracting Parties.

ARTICLE 15

This convention does not in any way affect the right of carrying out the local transport of passengers and goods between ports placed under the sovereignty or authority of one and the same State, the regulation of which the High Contracting Parties consider it advisable should depend entirely on special agreements, acts of navigation or custom governing each particular waterway.

ARTICLE 16

The present convention must not be understood to imply in any way, on the one hand the withdrawal of still greater facilities granted for the free exercise of navigation, such, for instance, as the abolition of all dues and charges, on any international waterway, conditional on their being compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties, as defined in and applied to the present convention, or, on the other hand, the prohibition of the granting of such further facilities in the future.

ARTICLE 17

The present convention does not prejudice the application of Articles 325, 378, and 379 of the Treaty of Versailles, 288, 330 and 331 of the Treaty of Saint-Germain, etc.

ARTICLE 18

All disputes as to the interpretation and application of the present convention shall, in the absence of any special agreement for the establishment of a particular method for settling such disputes between the States signing such agreement, and failing also a direct understanding between the parties concerned, be brought in the first instance before the International Commission referred to in Article 11, if such exists for the waterway in question. Should no such International Commission exist, or should its decisions prove unacceptable to any one of the States, any interested State may lay the case before the Permanent Communications and Transit Committee, and may, should occasion arise, appeal, within the prescribed periods, to the Permanent Court of International Justice, under the procedure laid down in the Resolution of the Assembly of the League of Nations, under date..., and in the Scheme for the Organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee, under date...

These disputes shall have the advantage, in cases of urgency, of being dealt with expeditiously, the International Commission, the Permanent Communications and

Transit Committee and the Permanent Court of International Justice having the power without prejudice to the final conclusions, opinion and verdict on the basic cause of dispute, of pronouncing a provisional judgment, to the extent of prescribing any provisional measures, designed in particular to facilitate navigation to the degree that it existed before the act or occurrence which gave rise to the dispute.

ARTICLE 19

Should any one of the High Contracting Parties fail to comply with the findings of the Commission, or of the Permanent Communications and Transit Committee, or, if appeal has been made to the Permanent Court of International Justice, with the verdict of that body, any High Contracting Party may lay the matter before the Permanent Court of International Justice, in order to obtain from it a declaration as to the measures which may legally be taken in the matter by each of the High Contracting Parties.

ARTICLE 20

The Secretary-General of the League of Nations shall communicate certified uniform copies of the present draft of the convention to all the Members of the League of Nations, as also to all the Powers to which the Council of the League of Nations may decide to forward officially the present draft convention.

The Secretary-General of the League of Nations shall be notified of the official ratifications of the present convention, and shall register them.

ARTICLE 21

As soon as the ratifications of three of the Members or Powers referred to in the preceding article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or Powers referred to in the preceding article.

ARTICLE 22

This convention shall come into force thirty days after the date on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat. Thereafter, this convention will come into force for any other Member or Power thirty days after the date on which the ratifications of that Member or Power is registered with the Secretariat.

ARTICLE 23

Every Member which ratifies this convention agrees to bring its provisions into operation not later than July 1st, 1922, and to take such action as may be necessary to make those provisions effective.

Every Power which ratifies this convention after receiving official communication from the Council of the League of Nations, agrees to bring its provisions into operation not later than 18 months after the date of that communication, and to take such action as may be necessary to make those provisions effective.

ARTICLE 24

Any Member or Power which has ratified this convention may denounce it after the expiration of ten years from the date on which the convention comes into force by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 25

At least once in ten years, the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 26

The French and English texts of this convention shall both be authentic.

SECTION IV

DRAFT CONVENTION ON THE INTERNATIONAL REGIME OF NAVIGABLE WATERWAYS

(See p. 419.)

(Text prepared by the Commission of Enquiry and submitted to the Conference.)

The General Communications and Transit Conference of the League of Nations,
Assembled at... by...

Having decided to adopt certain proposals relating to the International Regime
of Navigable Waterways, constituting the item of their agenda, and

Having decided that these proposals should be drawn up in the form of a Draft
International Convention,

Adopts the following draft Convention with a view to its ratification by the
Members of the League of Nations, as also by such other Powers to whom it may have
been officially communicated by the Council of the League of Nations; those among
the said Members and Powers who ratify the present Draft Convention being known
hereafter as High Contracting Parties.

PREAMBLE

Principles of the Convention.

The High Contracting Parties, being desirous of applying to the waterways (See p. 420.)
situated under their sovereignty or authority the principle of Freedom of Commu-
nications, in conformity with Article 23 (e) of the Covenant of the League of Nations,
do hereby enact the provisions of the present Convention concerning the regime of
certain of these waterways defined below in Article 1 as being international.

As regards waterways not defined as international in virtue of the said Article,
they further declare their intention of being inspired by the same principle and of
applying it as far as possible in each particular case; it being understood, on the one
hand, that henceforth, and without prejudice to the provisions contained in the
Convention on Freedom of Transit, there shall be no discrimination whatever between
the High Contracting Parties on account of the flag flown, as regards through traffic
in imports and exports, without transshipment, and that, on the other hand, this para-
graph does not preclude the establishment of public services for towage or other forms
of traction carried on as monopolies.

I

International Waterways.

ARTICLE 1

Definition.

In applying the present Convention the following are declared to be " international (See p. 422.)
waterways " :—

1. All parts which are naturally accessible from the sea of a waterway which, in
its course, naturally accessible from the sea, divides or crosses different States; and

also all parts of any waterway naturally accessible from the sea, which connect with the sea a waterway included in the above definition.

For the purposes of the above definition it is understood :—

- (a) That the possibility of transshipment from one vessel to another is not excluded by the words “ accessible from the sea ” ;
- (b) That tributaries are to be considered as separate waterways;
- (c) That lateral canals constructed in order to remedy the defects of such a waterway are assimilated thereto.

2. Waterways or parts of waterways, whether natural or artificial, expressly declared as being placed under the regime of this Convention in unilateral Acts or agreements with the consent, in particular, of the State or States under whose sovereignty or authority the waterways or parts of waterways in question are situated.

II

Freedom of Navigation.

ARTICLE 2

Free Exercise of Navigation.

(See p. 425.) Subject to the provisions contained in Articles 4, 14 and 16, each of the High Contracting Parties shall accord the free practice of navigation to the vessels flying the flag of any one of the other High Contracting Parties on those parts of waterways specified above which may be situated under its sovereignty or authority.

ARTICLE 3

Equality of Treatment.

(See p. 425.) In the practice of such navigation, and subject to the provisions referred to in Article 2, the subjects, property and flags of all the High Contracting Parties shall be treated in every respect on the basis of absolute equality, no distinction being made between the subjects, property and flags of the different riparian States, including the riparian State under whose sovereignty or authority the part of a waterway in question may be situated, or between the subjects, property and flags of riparian and non-riparian States; it being understood, in consequence, that no exclusive rights of navigation shall be granted on such waterways to companies or to private individuals, and that in so far as concerns the application of the present article the High Contracting Parties shall recognise the maritime flag of vessels belonging to any High Contracting Party not possessing a sea-coast, when they are registered in the one place situated in its territory selected as the port of registration for such vessels.

ARTICLE 4

Restrictions.

(See p. 425.) Nevertheless, in exceptional cases justified by a combination of economic, technical and topographical circumstances, those among the High Contracting Parties who are co-riparian States of one and the same international waterway may, subject to the consent of all the States riparians of the waterway, or represented on its International Commission, if one exists, deny to the flags of all the non-riparian States the right to carry out the local transport of passengers and goods between the different States situated on that waterway.

ARTICLE 5

Administrative Measures.

(See p. 426.) On the waterways provided for in Article 1 and situated under its sovereignty or authority, each of the High Contracting Parties reserves to itself all existing rights

of issuing regulations and of taking the necessary measures for the general policing of the country by the application of laws and regulations with regard to customs, public health, precautions against diseases of animals and plants, emigration, immigration, and the import and export of prohibited goods, it being understood that these regulations and measures, which shall be reasonable and shall be applied on a basis of absolute equality to the subjects, property, and flags of every one of the High Contracting Parties, including the Contracting Party by which they are issued, must not unduly impede the free practice of navigation.

III

Dues and Charges.

ARTICLE 6

Charges for Services rendered.

No dues of any kind, other than dues in the nature of payment for services rendered (See p. 426.) and intended solely to cover equitably the cost of maintaining the waterway in a navigable condition, or of improving it and its approaches, or to meet expenditure incurred in the interests of navigation, shall be levied anywhere throughout the course of an international waterway, or at its outlet. The tariffs shall be calculated in proportion to such expenses, and the schedules posted up in the ports. These dues shall be levied in such a manner as to render unnecessary any detailed examination of cargo, except in cases of suspected fraud or contravention, and both as regards their amount and the method of their application, to facilitate international traffic as much as possible.

IV

Transit — Import — Export — Ports.

ARTICLE 7

Customs Formalities

The transit of vessels, passengers and goods on international waterways shall be effected under the conditions established by the Convention on Freedom of Transit, with the following additional provisions :— (See p. 427.)

When the two banks of an international waterway are within the same State, the customs formalities on goods in transit will be limited to placing them under seal or in the custody of a customs agent;

When an international waterway forms the frontier between two States, vessels, passengers and goods passing in transit shall be exempt from all customs formalities, except in those cases in which there are valid reasons of a practical nature for carrying out customs formalities in the part of the river which forms the frontier, but such formalities must not interfere with the facilities of navigation.

The dues provided for and authorised in Article 3 of the convention on Freedom of Transit shall not apply to the transit of vessels, passengers and goods on international waterways.

ARTICLE 8

Use of Ports.

Subject to the provisions of Articles 4, 14 and 16, the subjects, property and flags (See p. 428.) of all the High Contracting Parties shall enjoy equal treatment with the subjects, property and flags of the riparian State under whose sovereignty or authority the port is situated, as regards the use of all the ports situated on an international waterway, particularly as regards port dues and charges; it being understood that the goods to

which the present paragraph shall apply are those originating in or proceeding from or to the territory of one of the High Contracting Parties.

The equipment of ports situated on an international waterway and the facilities granted to navigation in those ports shall be available for public use to such reasonable degree as corresponds with the free and effective practice of navigation.

All customs, local octroi or consumption duties levied on imports and exports through the said ports must be uniform, irrespective of whether the vessel carrying or to carry the goods flies the flag of the national State or that of any one of the High Contracting Parties.

In the absence of special circumstances reasonably justifying an exception on account of economic needs, these duties shall be fixed on the same basis and at the same rates as similar duties at the other customs frontiers of the State concerned, and all facilities accorded by the High Contracting Parties over other land or water routes, or in other ports, for imports and exports, shall be equally accorded to imports and exports on the international waterway and the ports referred to above.

V

Works.

ARTICLE 9

Works for Upkeep and Improvement.

(See p. 429.) In default of any special organisation or agreements for the upkeep and improvement of an international waterway, each of the riparian States is bound to abstain from any action likely to impede navigation, and also to take suitable measures to remove any obstructions and dangers to navigation, and to carry out the works necessary for the upkeep of the waterway, or to permit their execution subject to an allocation of expenses between the States concerned, proportionate to their respective interest in the said works.

Should the States making the demand offer to defray the cost, each riparian State is likewise bound, in the same conditions, and in the absence of valid reasons to the contrary, based on interests other than those of navigation, such as in particular the maintenance of the normal hydraulic conditions, the needs of irrigation or of utilisation of hydraulic power, to carry out or cause to be carried out any works for the improvement of the waterway.

The stipulations of this Article may not be invoked against a riparian State in any case in which such State can prove that it is acting or has acted with the unanimous consent of all States riparians of the international waterway, or represented on the International Commission for this waterway, if one exists.

VI

Administration.

ARTICLE 10

Regulation of Navigation.

(See p. 430.) Subject to any stipulations to the contrary contained in special agreements or treaties, the administration of international waterways will be exercised by each of the riparian States under whose sovereignty or authority the waterway is situated. In particular, each of the said riparian States is both entitled and bound to publish rules and regulations for the navigation of the waterway, and to superintend their applications. These rules and regulations shall be framed and applied in such a manner as to facilitate freedom of navigation in the conditions provided for in the present Convention. The method of procedure for such matters as the instituting

of proceedings, prosecutions and the repression of acts committed to the prejudice of navigation shall, in particular, be as prompt as possible.

The High Contracting Parties recognise, however, the great desirability of an understanding between riparian States of the same international waterway regarding its administration, and especially of the adoption of navigation rules throughout the course of the waterway as nearly uniform as possible, compatible with local conditions.

ARTICLE 11

River Commissions.

In the event of certain functions being entrusted by virtue of one of the special agreements or treaties referred to in the preceding article, to an International Commission composed of Representatives of States other than the riparian States of the international waterway, such a Commission shall, subject to the stipulations contained in Article 9, be inspired solely by the interests of navigation, and shall come under the category of the organisations provided for in Article 24 of the Covenant of the League of Nations. By this it is understood that it will exchange directly with the appropriate organisation of the League of Nations any useful information, and will submit an annual report to the League of Nations. (See p. 431.)

The powers of the Commissions provided for in the preceding paragraph shall be determined by the Act of navigation of each waterway, and shall at least include the following :—

1. The Commission shall be entitled itself to draw up such navigation regulations as it thinks fit, and shall receive advice of all other navigation regulations;
2. It shall inspect or cause to be inspected periodically the whole course of the waterway, and shall inform the riparian States of any action which may be advisable for the upkeep of the works and the maintenance of good navigation conditions.
3. It shall be furnished by all the riparian States with official reports of all schemes for the improvement of the waterway.
4. Where the Act of navigation does not include special regulations for the levying of dues and charges, the Commission shall be entitled to approve the levying of dues and charges under the conditions prescribed in Article 6 of the present Convention.

VII

Miscellaneous Provisions.

ARTICLE 12

Application of the Convention in Time of War.

The stipulations contained in the present Convention shall be valid in time of war in the greatest measure compatible with the rights and obligations of belligerents and neutrals. (See p. 431.)

ARTICLE 13

Relationship of the present obligations to the other obligations of the Members of the League of Nations.

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its rights and obligations as a Member of the League of Nations. (See p. 431.)

ARTICLE 14

Vessels of War, etc.

It must be understood that, subject to any stipulation to the contrary contained in a special treaty or agreement concerning any given waterway, the navigation of (See p. 431.)

vessels of war, or of those connected with the policing or administration of the river, or in general with the exercise of any public authority in the name of a sovereign State, is in no way affected by the present Convention.

ARTICLE 15

Relations with States not adhering to the present Convention.

(See p. 431.) Each of the High Contracting Parties undertakes not to conclude with a State which does not adhere to the present Convention any agreement relating to navigation on an international waterway which would be contrary to the terms of the present Convention if concluded between High Contracting Parties.

ARTICLE 16

Local Transportation.

(See p. 431.) This Convention does not in any way affect the right of carrying out the local transport of passengers and goods between ports situated under the sovereignty or authority of one and the same State.

ARTICLE 17

Greater Facilities.

(See p. 433.) The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of still greater facilities granted for freedom of navigation, such, for instance, as the abolition of all dues and charges, on any international waterway, under conditions compatible with the principle of equality between the subjects, property and flags of all the High Contracting Parties, as defined in and applied to the present Convention, or, on the other hand, the prohibition of the granting of such greater facilities in the future.

ARTICLE 18

Relationship of the present Convention to the Peace Treaties.

(See p. 433.) The present Convention does not prejudice the application of the Treaties of Versailles, St. Germain, Neuilly, etc., between the Powers signatory to these Treaties.

ARTICLE 19

Settlement of Disputes.

(See p. 433.) In the absence of any direct agreement between the parties concerned, any disputes as to the interpretation and application of the present Convention shall be brought in the first instance before the International Commission referred to in Article 11, if such exists for the waterway in question. Should no such International Commission exist, or should its decisions prove unacceptable to any one of the States, any interested State may bring the matter before the Permanent Communications and Transit Committee of the League of Nations, and may ultimately appeal, within such period as may be prescribed, to the Permanent Court of International Justice, in the conditions provided for in the Resolution of the Assembly of the League of Nations, dated....., and in the Scheme for the Organisation of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee, adopted by the General Communications and Transit Conference, on.....

These disputes shall, in cases of urgency, be accorded an accelerated procedure, the International Commission, the Permanent Communications and Transit Committee and the Permanent Court of International Justice having the power, without prejudice to the final conclusions, opinion and judgment on the basic cause of dispute,

of pronouncing a provisional conclusion, opinion and judgment, to the extent of prescribing any provisional measures, designed in particular to restore to navigation the facilities which existed before the act or occurrence which gave rise to the dispute.

The present Article does not preclude the settlement of disputes either by arbitration or by any other means in virtue of special conventions between interested States, except as regards waterways which are subject to the jurisdiction of the International Commissions referred to in Article 11.

ARTICLE 20

Consequences of Non-execution.

Should any one of the High Contracting Parties fail to comply with the findings (See p. 433.) of the Commission, or of the Permanent Communications and Transit Committee, or, if an appeal has been made, with the judgment of the Permanent Court of International Justice, any High Contracting Party may bring the matter before the Permanent Court of International Justice, in order to obtain from it a declaration as to the measures which each of the High Contracting Parties may be entitled to take.

ARTICLE 21

Ratification.

The Secretary-General of the League of Nations shall transmit a certified copy of (See p. 433.) the present Draft Convention to each Member of the League of Nations, as well as to each Power to which the Council of the League of Nations may decide that the present Draft Convention should be officially communicated.

The Secretary-General of the League of Nations shall be notified of the ratifications of the present Convention, and shall register them.

ARTICLE 22

Notification.

As soon as the ratifications of three of the Members or Powers referred to in the (See p. 433.) preceding article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or the Powers referred to in the preceding Article.

ARTICLE 23

Coming into Force of the Convention.

The present Convention shall come into force on the thirtieth day after the date (See p. 433.) on which such notification is issued by the Secretary-General of the League of Nations, but it shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat, or which have already contracted to adhere thereto. Thereafter, this Convention will come into force for any other Member or Power on the thirtieth day after the date on which the ratification of that Member or Power is registered with the Secretariat.

ARTICLE 24

Date of Application of the Convention.

Each Member which ratifies this Convention agrees to bring its provisions into (See p. 433.) operation not later than July, 1st 1922, and to take such action as may be necessary to make those provisions effective.

Every Power which ratifies this Convention after having received communication from the Council of the League of Nations agrees to bring its provisions into operation

not later than 18 months after the date of the said communication, and to take such action as may be necessary to make those provisions effective.

ARTICLE 25

Denunciation.

(See p. 433.) Any Member or Power which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention comes into force by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 26

Revision.

(See p. 433.) At least once in ten years the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 27

Official Text.

(See p. 433.) The French and English texts of this Convention shall both be authentic.

ANNEX TO SECTION IV

REPORT ON THE DRAFT CONVENTION ON THE INTERNATIONAL REGIME OF NAVIGABLE WATERWAYS ⁽¹⁾

*Presented to the General Communications and Transit Conference
by the Commission of Enquiry.*

If the Convention on Freedom of Transit is in certain respects an innovation, the Convention on the International Regime of Navigable Waterways, on the contrary, although also closely connected with the application of Article 23 (e) of the Covenant, fits in with a tradition already firmly established. There is no necessity to review here in detail the century-old efforts to extend to navigation on international rivers that freedom so long enjoyed by commercial navigation upon the sea. The Congress of Vienna laid down those principles which, during the course of the 19th century, developed gradually and led, step by step, to international agreements governing the statutes of navigation for the Rhine, the Elbe, the Po, the Danube, the Niger, the Congo, etc. Even where definite agreements did not exist, the principles of the Congress of Vienna were invoked on more than one occasion in connection with disputes

(1) This Report forms part of the preliminary documents for the General Communications and Transit Conference (*Green Book*).

between States which had not signed the Acts of Vienna; the common law of every nation was permeated profoundly by them, and taken as a whole, the same principles acted as the inspiration and determining factor of the provisions of the Peace Treaties and kindred treaties which lay down the regime of the Central European rivers now declared international : the Elbe, the Oder, the Niemen, etc.

The Convention on the International Regime of Waterways reaffirms these same principles, and in this respect may be looked upon as a revised Act of Vienna. There are, however, certain considerable differences between the two Conventions which it is desirable to explain here.

Whilst the Act of 1815 laid down a certain number of regulations, the present Convention endows the new regime with greater scope and powers, by regarding it as the direct outcome of the Covenant of the League of Nations, and of the ideal of Freedom of Communications emphasised by Article 23 (e) of the Covenant, and by placing the scheme in its entirety under the jurisdiction of the League of Nations. The idea underlying Article 23 (e) of the Covenant has, moreover, led to a considerable increase in the number of waterways to which the Convention will apply.

The technical situation is no longer the same as it was at the time of the Congress of Vienna. So great has been the progress made in the development of artificial waterways that navigation on rivers accepted as international by the Congress of Vienna, that is to say, navigable from the sea, and dividing or crossing more than one State, is now only one element in interior international navigation. Had the Convention been content merely to assume equality for all in freedom of navigation on these rivers, no doubt some advance would have been made in the exposition of established principles, and possibly in insuring their application, but in doing so it would have failed to carry out fully the principle underlying Article 23 (e) of the Covenant—Freedom of Communications. In the present state of the world, every measure which limits that freedom and equality, either on national or international waterways, forces a transshipment at the frontier of imports and thus virtually puts a premium upon the most deplorable utilisation of the means of transport upon which States in contiguity to each other must rely for the essential interchange of their commerce.

Hence, the Preamble which is incorporated with the Convention, and is legally a part of it, extends the principle of Freedom of Communications to national waterways.

In the opinion of many of the delegates it would have been extremely desirable to extend freedom of navigation to the local transport of passengers and goods between ports situated within the same State. There are numerous precedents for such a measure, but the commentary upon the articles will show that, in the view of certain States, the adoption of this measure would have bristled with difficulties and threatened their interior economic existence, and accordingly it was left outside the Convention. After considerable discussion, which will be explained below, the Commission felt obliged to take this course, holding the view that the essential part of their work would not be prejudiced by abandoning a problem which it appeared impossible to solve in so general a manner.

There is yet another consequence of technical and economic evolution since the Congress of Vienna. A hundred years ago waterways were principally used for purposes of navigation; to-day this is no longer invariably the case. Waterways nowadays frequently serve other purposes. Some of them have become, or are capable of becoming, a valuable source of electric power, or can be utilised with considerable profit, notably for purposes of agriculture, forestry and fishing; from this point of view the absolute priority of navigation is no longer invariably admissible, and cases may arise where the carrying out of works is perfectly legitimate although such works may be liable to impede navigation. The Swiss delegation, however, whilst agreeing to the text of the Convention, declared itself unable to support the above views.

In face of these new problems, or problems which for the first time have attained prominence by the universal and compulsory character of the Convention, it was often a temptation to the Commission to avoid these difficulties and endeavour to find another distinction besides that between national and international waterways which would considerably lighten its task, namely, the setting up of two distinct regimes, the first to entail the maximum amount of freedom, and the absolute priority of navigation over certain waterways of more general international concern, and the second to be

characterised by a freedom more adapted to the special interests of the riparian States over all waterways specified as international, which had not, either in virtue of previous conventions or consequent on a special administrative regime, been considered as coming under the first category. The impossibility, however, of determining upon a satisfactory criterion for such a distinction obliged the Commission to revert to the traditional system of a single regime in drafting which the necessity for compromise has been borne in mind.

The detailed commentary on the articles can alone give some idea of the numerous discussions which ensued on this subject, and of how, after several months of study of the question, unanimity was reached upon almost every point. If, on certain points, the Commission was unable to realise in full what some of its members would have regarded as a codification of existing common law, nevertheless the document as presented, taken as a whole, marks a great step forward, while leaving full scope for greater freedom to acts of navigation for particular rivers.

For the first time, in connection with a question calculated from every point of view to assert a profound influence upon the economic attitude of countries traversed by international waterways, a number of stipulations which are not only precise, detailed, and far-reaching in their effects, but which are subject also to an established jurisdiction, have been adopted by the representatives of eighteen States. Though not authorised to commit their Governments, these representatives have declared their readiness, subject to certain reservations which will be referred to in due course, to justify the above provisions, and to recommend them for adoption.

PREAMBLE. — The Preamble proclaims the principle of Freedom of Communications and its application to all waterways situated under the sovereignty or authority of the High Contracting Parties. Some of these waterways will be defined in Article 1 as international and subject to the provisions of Articles 2—20; the waterways not defined as international in virtue of the above Article 1 will be governed only by the provisions contained in the second paragraph of the Preamble. They consist of waterways situated in the territory of a single State, or which, although they divide or cross two or more States, do not provide them with natural access from the sea in the conditions provided for in Article 1.

The reasons have already been set forth which prompted the Commission, in the Convention on the International Regime of Waterways, to prescribe a regime of freedom of navigation and of equality between the subjects, property and flags of all the Contracting Parties, not only on international waterways as understood by the Congress of Vienna with the modifications prescribed in the present Convention, but also on national waterways. These provisions did not form part of the earlier drafts of the Convention; the necessity for them was indicated by the general trend of the discussions.

From the outset the Dutch delegation, supported by several other delegations, declared that, in conformity with the principle of Freedom of Communications, freedom of navigation should be extended to every waterway without discrimination, which included, in the view of the Dutch delegation, even inter-oceanic canals. In the course of the discussion on Article 1, the French delegation laid repeated stress on the illogical nature of any stipulation which made the regime of a waterway dependent upon its being of territorial significance to more than one State. This delegation could not admit that a waterway which, if flowing through the territory of a single State only, could be closed to all flags other than the flag of that State, should be on the contrary open to every flag merely from the fact that over a navigable course of several hundreds of miles it flows for a few miles through the territory of another State. The only means of escape from this anomaly, which would doubtless deter numbers of States from adhering to the Convention, and might further aggravate the problem of frontier lines, was, in its opinion, to extend the liberal regime to every waterway without exception.

The British delegation, while associating itself with the conclusion of the French delegation, maintained that the very fact of a river naturally providing two or more States with access from the sea implied a special servitude as regards its use, and that, moreover, the customary arrangements which were in any case necessary to

prevent smuggling along such rivers were an important element in rendering possible a special international régime of navigation.

The conclusions in each case were identical and were accepted by the Commission, which decided, however, at the instance of the French delegation, that the obligations embodied in the Convention to guarantee freedom of navigation on international waterways should not be applied in detail to national waterways, and that, in particular, the régime of national waterways should not be subject to the jurisdiction of the League of Nations as provided for in the case of international waterways. For this reason the régime of national waterways is prescribed in a preamble, which forms part of the Convention and is ratified with it, and which, like the Convention itself, includes certain strict obligations, although it does not fall within the scope of Article 19 as regards the settlement of disputes.

These obligations, which are legally binding with the same force as the Convention, are detailed in the latter part of the second paragraph of the preamble, from the words *it being understood*. They are concerned with through import and export traffic without transshipment, thereby excluding not only local transport as defined later, but also transport the actual continuity of which is interrupted by transshipment or unloading on to quay or by the inability of a vessel to continue its voyage without towage.

It should likewise be observed that the régime for towage on national waterways provided for in the preamble is different from that contained in those articles of the Convention which concern international waterways. (*See comments on Article 10.*)

On every waterway, whether national or international, the combination of a tug and its tow must, in the opinion of the Commission, be considered as a single craft proceeding under its own power. On national waterways, however, the establishment of public services for towage or other forms of monopolised traction will always be permitted, while on international waterways this will only be allowed when compatible with the provisions of Article 10 concerning the regulation of navigation; that is to say, only when for technical reasons the establishment of a special service does not hinder, but on the contrary, “ facilitates ” the free exercise of navigation.

The Czecho-Slovak, Polish, Rumanian and Serb-Croat-Slovene delegations made reservations with regard to the preamble, on the grounds that the riparian States should be left entirely free to establish whatever régime they liked on their national waterways.

The Chinese delegation declared that it did not oppose the adoption of the preamble, subject to consequent approval by its Government but observed that as regards China, where the adoption of a régime of this character would revolutionise the conditions of navigation over a considerable stretch of waterways, a protracted period of time must needs elapse before its application could be brought about.

SECTION I

International Waterways.

The expression *international waterways* has been adopted in the definition chiefly on account of its traditions and because it carries with it a special technical meaning. In the earlier drafts the Commission used the expression *waterways of international concern* in order to emphasise the fact that, in the absence of special provisions relating to any given waterway, the recognition of the international nature of a waterway does not in any way imply the internationalisation of its administration, but only the recognition of definite international obligations as to the utilisation of the waterway.

ARTICLE 1. — The definition included under (1) of Article 1 gave rise to lengthy discussions.

Certain delegations, in particular, the French, had proposed that the Commission should not go beyond the establishment of a régime for specified international rivers,

which should be enumerated in an annex according to their geographical names. The Commission, after a study of this scheme, unanimously decided that such an enumeration entailed insuperable difficulties—that it would in fact be a retrogression from the tradition of the Congress of Vienna, and would end by causing only those waterways to be recognised as international which had already been recognised as such in previous conventions.

The principle of a general definition having thus been adopted, the question arose whether it would be desirable to adopt only a single general definition, together with a uniform regime for all rivers included in this definition, or whether, as the French delegation proposed, two definitions might not be adopted, the one applying to *rivers of limited international concern*, and the other to *rivers of more general international concern*. The latter might, for example, consist of those waterways governed by conventions to which Powers other than the riparian States were Contracting Parties, or, again, waterways placed under the jurisdiction of international commissions, comprising representatives of States other than the riparian States.

The Commission, as explained above, decided that neither of these criteria would invariably and infallibly define the expression *more general international concern*. Whilst deciding to make use of one of these distinctions for the application of certain articles, the Commission did not see its way to base on them an opposition of principle resulting in two different regimes.

A single general definition was therefore maintained. Its form, which appears somewhat complex, was considered after long discussions as being absolutely unavoidable in order to provide for every possible category of waterway (rivers, tributaries, etc.), to which the international regime should apply. The appended diagram illustrates its scope.

In particular it was desired :—

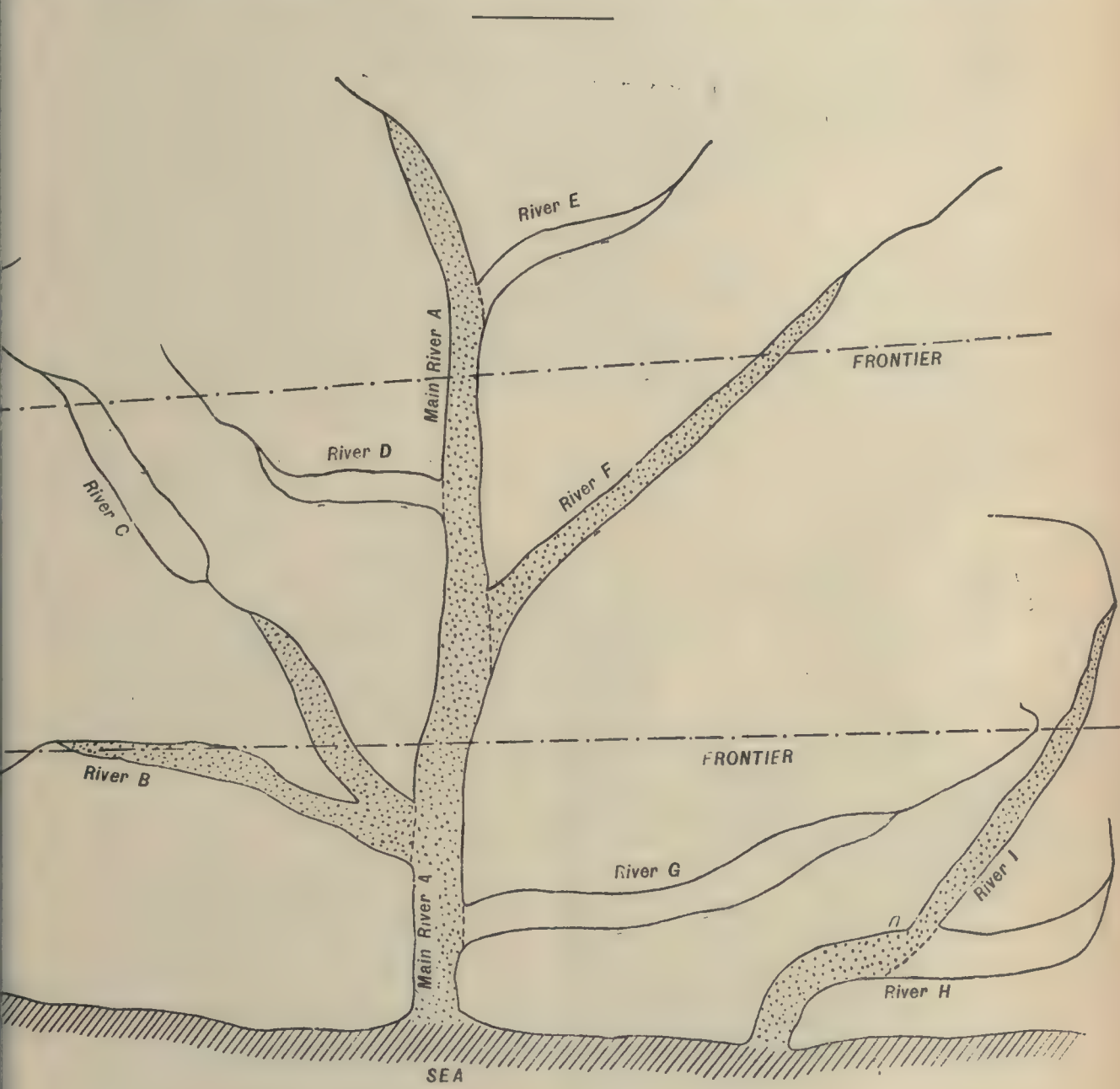
- I. To place under the international regime those portions of a waterway which naturally provide more than one State with access from the sea.
- II. To extend the application of the international regime to the upper part of waterways of which the lower part provides more than one State with access to the sea, although this upper part itself provides only one State with access to the sea.
- III. To exclude from the international regime the tributaries of international rivers, when those tributaries, in that part of their course naturally navigable from the sea, only flow through one State.

There was no discussion upon Proposition I.

On the other hand, Proposition II, which was supported by the British delegation, gave rise to objections on the part of the French delegation. The British delegation maintained that if the upper part of international waterways was not subject to internationalisation, there was a failure to apply the principle of Freedom of Communications, and that the upstream State would benefit in comparison with the downstream State from advantages which it did not reciprocate, and further, that the principle of this proposition had been definitely recognised by the Congress of Vienna, and that the placing of the limit of internationalisation at the last frontier would be a regrettable setback. The French delegation maintained that as internationalisation was only a kind of right of way with a view to providing access from the sea for States whose traffic is obliged to pass through the territory of the downstream State, nothing could justify the extension of internationalisation to the upper part of the waterway. Finally, the French delegation associated itself with the views of the British delegation, supported by the majority of the other delegations, as soon as the general principle of Freedom of Communications had been applied not only to international but also to national waterways. Freedom of navigation could no longer be considered as the consequence of a right of way.

Proposition III was adopted as a compromise between two extreme points of view. The Belgian, Greek and British delegations proposed, failing a decision (such as that advocated by the Dutch delegation), to place all the naturally navigable tributaries of international rivers under the international regime—at least to bring under this regime those tributaries which, although in their naturally navigable course flowing through only one State, empty themselves into an international river at a point

WATERWAYS INTERNATIONAL IN VIRTUE OF THE DEFINITION CONTAINED IN ARTICLE 1



INTERNATIONAL WATERWAY



NATURALLY NAVIGABLE WATERWAY
NOT INTERNATIONAL



WATERWAY NOT NATURALLY NAVIGABLE

River H is international from the sea to point h, as part of a waterway (River H) not international by itself in virtue of the definition, but connecting with the sea river I which comes under the definition.

between which and the sea the river crosses or forms a frontier (*i. e.*, excluding only tributary G on diagram). The Roumanian and Serb-Croat-Slovene State proposed, on the other hand, to exclude all tributaries from the application of the international regime.

“Lateral” canals constructed in order to remedy the defects of an international waterway are assimilated thereto and consequently come under the international regime. As against this, in spite of a proposition to this effect made by the British delegation, the Commission decided not to place under the international regime, at all events by means of a clause of a general nature, “lateral” canals constructed in order to connect the upper part of an international watercourse with its lower part also naturally navigable, but separated from the upper part by a non-navigable section of a river. There was reason to fear in such a case that a State under whose sovereignty or authority this non-navigable part was situated would not proceed to carry out works of which not only would the exclusive benefits not accrue to it, but which also might result in immediately and automatically placing the entire upper part of the river under the international regime in virtue of the definition.

It is understood that a railway constructed either to supplement international parts of a waterway or to connect two navigable parts of a waterway, one of which is subject to the international regime, is not to be considered, simply by virtue of this Convention, as being necessarily subject to the conditions of freedom and equality prescribed therein.

Lakes which form part of international waterways are placed under the same regime as the waterways. The wording *waterway* has been chosen in preference to *watercourse* primarily in order to include these lakes, and in order not to exclude cases where as a result of tidal action, or for any other reason, a waterway does not, strictly speaking, possess a course.

By *naturally accessible from the sea* is meant every part of a waterway, whether works have been carried out along its course or not, which has been or is in its natural state accessible from the sea for any description of navigation whatsoever. Waterways only suitable for rafting or logging are excluded : the expression *from the sea* was chosen in preference to *to the sea* in order to exclude those cases in which navigation can only be carried out downstream.

Paragraph I of Article 1 defines international waterways *by their nature*.

Paragraph II makes provision for adding to these waterways any other natural or artificial waterway rendered international by a unilateral act or by convention.

Already, in the Treaties of Versailles and Saint-Germain, as well as in the parallel treaties, examples have been furnished of waterways thus internationalised conventionally, such as, in particular, junction canals connecting different waterways. It seemed necessary to insert in the Convention a reference to acts or agreements of this kind, not so much from the point of view of adding to their juridical force, but in order to regularise the position on these waterways of Members of the League of Nations which have not signed such treaties or agreements and which, as a result of internationalisation, would not only receive certain benefits from riparian States, but also contract obligations, such as that of submitting their disputes concerning navigation on these waters to the jurisdiction of the League of Nations. Identical cases may arise in the future.

SECTION II

Freedom of Navigation.

ARTICLE 2. — Just as the Convention on Freedom of Transit does not imply any derogation of the right of each of the Contracting Parties to administer transit routes and to regulate traffic, subject only to the obligations and provision for appeals contained in the Convention, so the present Convention, subject to the same reserves, does not imply any interference whatsoever with the rights of sovereignty or authority possessed by States, unless specifically provided for in a special act of navigation.

Freedom of navigation in virtue of this Convention is assured only to vessels flying the flag of one of the Contracting Parties. The Swiss and Dutch delegations

made a formal demand for the maintenance of what they considered to be the common right of all, that is to say, freedom for every nation. The Commission considered it desirable that this freedom should be extended to every nation, but only as a result of the invitation which may be extended to them to adhere to the present Convention and to benefit by its advantages simultaneously with assuming its obligations. (See the commentary upon the Convention on Freedom of Transit.)

Stipulations concerning vessels apply likewise to the crews of these vessels.

ARTICLE 3. — The latter part of Article 3, concerning the recognition of the maritime flag of vessels belonging to any Contracting Party not possessing a sea-coast, was inserted at the request of the Swiss delegation, and reproduces (within the scope of the present Convention), one of the clauses of the Treaty of Saint-Germain, the benefit of which is thus extended to the Powers which sign the present Convention, but which were not signatories of that treaty.

In order to settle this question generally, and in view of the pressing importance of eliminating the abnormal situation created by the application of Article 225 of the Treaty of Saint-Germain, by the terms of which at the present time, States which are not Members of the League of Nations, but which have signed the Treaty, receive benefits which have not yet been accorded to States which are Members of the League of Nations, but have not signed the Peace Treaties, the Commission decided further to recommend the General Conference to adopt a special Convention which simply reproduces the text of the above-mentioned Article 225, while extending its benefits to every Power which consents to become a Contracting Party (1). (See Appendix to this chapter and Annex III a.)

ARTICLE 4. — Article 4 deals with the question of trade between the ports of the various riparian States (*grand cabotage*), and was the subject of lengthy discussion, resulting finally in a compromise. The Belgian, British, Dutch, Greek and Japanese delegations considered that it would be contrary to the principle of the freedom of navigation to authorise a riparian State of an international waterway to reserve *grand cabotage* to itself. On the other hand, the Chinese, Roumanian and Serb-Croat-Slovene delegations insisted that it ought to be permitted to be reserved by unanimous agreement between the riparian States. The French delegation proposed that the reservation be allowed on waterways international only in virtue of the definition, that is to say, of limited international concern, and that it be prohibited on waterways of general international concern, which might be defined as *international waterways placed under the jurisdiction of international commissions comprising representatives of States other than riparian States*. The Commission decided to allow the right of reserving *grand cabotage* only in very exceptional cases, justified by a combination of economic, topographical and technical considerations. It had in mind in particular the very special case of the River Amur, which for a considerable part of its course constitutes the frontier between China and Russia, and upon which navigation between Chinese and Russian ports has up to now been reserved to the flag of these two riparian States. The intention is to allow an exception of this sort to the principle of equality of flag only in cases, not detrimental to the general interests of international navigation, where the necessity for it is indicated by traditions and conventions of long standing, the upsetting of which would revolutionise an economic regime based on very special technical and geographical circumstances.

In case of dispute, the jurisdiction of the League of Nations will be in a position to interpret the Convention. It is to be observed, further, that as regards waterways subject to the jurisdiction of international commissions comprising representatives of Powers other than the riparian States, the guarantee of unanimous agreement between the States represented on these commissions will without doubt suffice to prevent any abuse of this stipulation, the presence on these commissions of representatives of the non-riparian States giving in this respect an additional guarantee.

In this article as in Article 9, concerning works, the Commission has been led to recognise such waterways as of more general international concern, although it has

(1) See pp. 428 and 461.

not seen its way to base any distinction of principle on this fact. The Dutch delegation, whilst in agreement as to the text of the Convention, declared itself unable to share the view contained in the two previous sentences.

As for fresh cases which might arise in the future, they will be interpreted by the same jurisdiction in conformity with precedents already recognised as valid.

In spite of the opinion of the Belgian delegation, the Commission decided not to prescribe that, before any use was made of the derogations envisaged in the present article, permission must be obtained from the Council of the League of Nations or from the Permanent Communications and Transit Committee. The motives which led to this decision are of the same order as those explained in the commentary on Article 10 of the Convention on Freedom of Transit.

The words *local transport* will be explained in connection with Article 16.

ARTICLE 5. — The interpretation of the expressions *reasonable, unduly*, which are frequently to be met with in the present Convention, as also in that on Freedom of Transit, has been explained in the preface preceding the commentary on the articles of that Convention (1).

SECTION III

Dues and Charges.

ARTICLE 6. — Article 6 merely defines the nature of the dues and charges which may be levied, without specifying the method of their collection or the financial regime of waterways. It had been proposed to prescribe, or at least to suggest as desirable, the system of a common fund between riparian States. The Commission decided that by dealing with this question the Convention would lose its general character, and that a stipulation of this nature, which might well vary for the different waterways, would be out of place except in their respective acts of navigation.

It had likewise been proposed, in particular by the Swiss delegation, to stipulate that dues and charges should be established in order to favour long-distance journeys, but on this point the Commission decided not to lay down a hard-and-fast rule for the special benefit of long-distance voyages; it confined itself to stipulating that international traffic should be facilitated as much as possible.

Charges to be levied are to be exclusively in the nature of payments for services. It was not possible to stipulate that every individual payment must correspond strictly to a specific service rendered, but the sum total of charges levied should not do more than cover equitably the cost of maintaining the waterway in a navigable condition, etc. Further, it is to be understood that charges should be fixed and levied in such a way that one particular class of traffic will not be unduly favoured in comparison with another; the tariff of charges must not become an instrument of international economic warfare. Such is the meaning of the expression *equitably*.

It will be noted that the Commission did not see their way to lay down the principle of absolute exemption from dues, which not infrequently is found in acts concerning international waterways. As will be seen below, one of the articles in the Convention, Article 17, is intended in particular to countenance such an exemption, where prescribed or customary upon certain waterways, or when its admission at some future date might appear desirable. Like the Convention on Freedom of Transit, the present convention, in common with all General Conventions, can only establish a minimum right.

It was recognised by the Commission that the technical conditions under which waterways are now used by vessels of ever-increasing draught have increased the difficulty of applying generally the principle of gratuitous use, which in the past has often been allowed, but the maintenance of which would result in preventing certain States from embarking upon expensive works of maintenance and improvement of a waterway, the cost of which would fall exclusively upon their own exchequer.

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 286.

Costs of improvement include the non-redeemed capital cost.

Whilst favourable to the principle that dues and charges may be levied when absolutely necessary for the improvement of a waterway, the Swiss delegation nevertheless declared its inability to acknowledge the accuracy of the commentary on Article 6, by the terms of which the cost of canalising a waterway would be included in the words *cost of maintenance* or *costs of improvement*. In their view the question ought not to be settled in advance, but, unless a previous agreement had been reached in the act of navigation governing the waterway in question, should be specially examined in every case.

Costs of pilotage, buoying, lighting, etc., come within *expenditure incurred in the interests of navigation*.

It goes without saying that this, like every other article in the present Convention, must be applied with an eye to the provisions of Article 17 concerning greater facilities already accorded or which may be accorded in any particular case.

SECTION IV

Transit, Import, Export, Ports.

ARTICLE 7. — The first paragraph of this article refers to the Convention on Freedom of Transit with regard to the transit of vessels, passengers and goods over international waterways. That Convention will, within these limits, be applied on the territories situated under the sovereignty or authority of any one of the Parties Contracting to the present Convention whether these have or have not adhered to the Convention on Freedom of Transit.

It was not thought necessary to enumerate all the provisions of the Convention on Freedom of Transit, including those which provide for the measures necessary to ensure that traffic is *bona fide* in transit, and also those concerning national security, which automatically apply to transit over international waterways in virtue of this article. Requisitioning is only admissible in the conditions described in Article 7 of the Convention on Freedom of Transit, namely, when necessitated by dangers from without or by some national emergency.

It is obvious that the reference to the Convention on Freedom of Transit, which provides for transit by the most appropriate routes, does not in any way prejudice the free practice of navigation, in conformity with Article 2, over all parts of waterways which are international in virtue of Article 1.

The observations on the subject of the transit in general of arms and munitions, as governed by the Convention on Freedom of Transit apply equally to the transit of arms and munitions over navigable waterways.

The exception provided for at the end of the second paragraph of Article 7 had reference more especially to the present system of customs formalities on the Meuse and on the Rhine, at Eysden and at Lobith.

A reservation on the subject of the last paragraph was made by the Chinese, Czecho-Slovak, Italian and Serb-Croat-Slovene delegations, which held that expenses of supervision, custody, etc., imposed on riparian Powers by transit over waterways should justify the levying of dues such as those provided for in Article 3 of the Convention on Freedom of Transit, by analogy with the obligations and usages referred to below in the concluding sentence of this paragraph. The decision of the Commission was that these dues, which had only been allowed in the Convention on Freedom of Transit after considerable discussion and as a compromise, did not correspond with services rendered to passengers, vessels or goods in transit, and should not be authorised except where strictly necessary; in particular, international waterways should be exempt from them. But nevertheless this paragraph is not to be interpreted as abolishing or modifying obligations or usages existing on certain waterways, whereby vessels in transit provide food and accommodation for customs officials while on board.

Lastly, it is understood that Article 7 applies both to transit through ports situated on international waterways, and also to navigation on these waterways themselves.

ARTICLE 8. — As far as the use of the ports situated on an international waterway is concerned, the subjects, property and flags of all the High Contracting Parties shall enjoy equal treatment with the subjects, property and flags of the riparian State. The “use” of the port must be interpreted to mean its commercial use, and the right of making use of the port,—its equipment, in short, of everything contributing to its use as a port. This right does not, however, imply in any way either the right to practise a profession in the port, to erect buildings or to participate in the operation and administration of the port.

Unlike the regime of free zones in ports referred to in the Resolution on the International Regime of Ports, the regime of ports situated on an international waterway does not in any way oblige the States under whose sovereignty or authority a port is situated to provide therein a minimum of facilities, but only to treat the subjects, property and flags of the other Contracting Parties in the same way, as concerns the use of the port, as their own nationals, property and flags.

Article 8 does not in any way prevent them from closing their ports completely, provided they are at the same time closed against their own nationals, property and flags.

The origin, starting-point and destination of property referred to at the end of the first paragraph only come into the question, in accordance with the principles explained in the Convention on Freedom of Transit, when such property has been unloaded from a vessel, and before it has been loaded into a vessel. As long as the goods are on board ship, they are covered by the flag.

A definition of the words *origin*, *starting-point* and *destination* has already been given (1).

As a result of Article 7, which applies the Convention on Freedom of Transit to international waterways, it follows that Article 8, dealing with ports, does not prevent the application of Article 6 of the said Convention of Freedom of Transit.

As regards the fourth paragraph, note the remarks on the corresponding provision in the Resolution on Ports (2).

It is to be observed that the expression *facilities granted* is used in this article in a technical sense, in contradistinction to the idea of legal rights to such facilities, and that the word *facilities* has not the wider meaning which it conveys in Article 17.

SECTION V

Works.

ARTICLE 9. — During the discussion on Article 9, dealing with works, a number of different points of view were urged. As noted in the general preface to the commentary on these articles, the technical progress which has taken place since the adoption of the existing international acts concerning river navigation has given to the question of works carried out on waterways, both for navigation and for other purposes, an importance it did not possess before, not only because of the tendency for heavier charges to be imposed on riparian States on this account, but because of the clashing for the first time between divergent interests of equal merit.

All the delegations were at one in recognising in the traditional obligation to maintain waterways in a good state of repair, one of the essentials for the practice of free navigation.

The French delegation considered, however, that, except where a waterway is more generally international, as, for instance, when placed under the jurisdiction of a commission not consisting exclusively of representatives of riparian States, it should be open to the riparian States only of an international waterway to claim the mutual fulfilment of an obligation which has now become extremely onerous, involving, as it frequently does, the maintenance of engineering works and structures. As against

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 288.

(2) See *Verbatim Records and Texts of the Recommendations relative to Ports placed under an International Regime*, p. 238.

this, and in order to ensure a practicable arrangement for the execution of necessary works, despite all possible obstructions, when the demand for such works is justified, the French delegation thought it necessary to provide for the possibility of causing works demanded by one State to be carried out on the territory of another State, should the latter declare that it is unable itself to proceed with them.

The Dutch delegation feared that such an infringement of the right of a State to carry out its own works might give rise to conflicts.

Finally, the Commission decided upon a *via media*, by recognising the right of all the High Contracting Parties to demand that the riparian States should carry out the works necessary for the maintenance of the river in a navigable condition, whilst, however, stipulating, in the last paragraph of the article, that such right shall not be invoked against a riparian State, if the latter is able to prove that it is acting or has acted with the unanimous consent of all the States riparians of the international waterway, or represented on the international commission for that waterway.

It was, however, conceded that in view of the capital importance of the maintenance of navigability, and the serious damage which might result merely from the negligence of a riparian State, every riparian State should be bound to allow the necessary works for such maintenance to be carried out on its territory, subject to the apportionment of the cost between the States concerned, in proportion to their respective interest in the said works.

It is understood that, in case of dispute, the Permanent Court of International Justice alone shall have the power to decide. If such a measure is prescribed, it is on no account to be viewed in the light of a penalty, but simply as the technical means employed as between Nations for carrying out the Convention.

The majority of previous conventions content themselves with prescribing the maintenance of the river in a navigable condition. At the instance of the Belgian delegation, the Commission arrived at the conclusion that, in view of the present rapid rate of technical progress, such a stipulation alone would not be sufficient to maintain an international waterway in a really adequate condition, from a technical point of view, to meet the requirements of traffic at any given moment. Accordingly, every riparian State is bound not only to maintain the international waterway in the same navigable condition as existed at the time when the General Convention is signed, but also to execute or allow to be executed such future works as may be necessary for the improvement of the waterway. But for this additional proviso, freedom of navigation on international waterways would soon exist in name only, because it could no longer be exercised in conditions compatible with normal requirements. As, however, it may happen that works of improvement may constitute a very heavy financial burden, the Commission were of opinion that the Permanent Court of International Justice should not be empowered, in case of dispute, to impose this expense on a State, and it was decided that the States requiring the execution of the works of improvement must offer to defray the cost. Upon this question of the works of improvement the Dutch delegation reserved its opinion.

Lastly, it was for the Commission to consider the possible case of opposition arising, apart from any consideration as to cost, between, on the one hand, interests other than those of navigation, such as, in particular, the maintenance of the normal hydraulic regime, irrigation requirements, utilisation of water power, considerations of national defence, etc., and, on the other hand, the carrying out of works for the improvement of the waterway. Most of the delegations were of opinion that, in the present state of technical development, it was not possible invariably to concede absolute priority to the interests of navigation, even on international waterways.

The Swiss delegation, however, saw the matter in a different light. It considered that, while on waterways where rights in favour of navigation had already been acquired other interests should also receive consideration, this should not be at the expense of the navigation rights, which alone possess a valid title in virtue of the law of nations.

The Swiss delegation also contested the accuracy of the view that the present technical position justified the closing to navigation of waterways hitherto accessible from the sea. The delegation recalled the fact that, as a general rule, the utilisation of hydraulic power and the construction of an irrigation system are intended to provide

means of increasing industrial, agricultural and other forms of production and to assist in extending civilisation to hitherto thinly populated districts, etc. But the very accomplishment of such an object will bring to light the necessity for providing these regions with fresh means of transport, and it would then become a subject of regret that facilities for navigation had not been preserved on a watercourse which this Convention had allowed to be closed, whereby the Convention would incur the reproaches of the generations to come for having overlooked the importance of the guarantees which are indispensable to the exercise of international navigation.

The Commission finally decided that, although interests other than those of navigation should certainly be reconciled as far as possible with those of navigation itself, yet, failing this, the whole body of the riparian States, with those which may be represented on the International Commission for a waterway, should be empowered, if unanimous on the subject, to make the best use of a waterway from an economic standpoint, to cease maintaining it in a navigable condition, or even close it completely to navigation. With regard to works for the improvement of a waterway, a State which makes out a good case, that is to say, one in which reasons based solely on international competition do not figure, should be allowed, under the same conditions, to subordinate the interests of navigation to its other legitimate interests.

All the provisions of Article 9 concern exclusively the riparian States of the portion of a waterway international in virtue of Article 1. No doubt, works executed by riparian States of the upper part of the stream which is not navigable from the sea and consequently not international, might have extremely deleterious effects upon navigation on the international portion. The Portuguese delegation had proposed that in the same article these States should be prohibited from carrying out such works, but the Commission, whilst favourable to the principle underlying the suggestion, considered that it lay outside the scope of the Convention on the International Regime of Waterways to regulate the use to which the non-navigable part of a waterway was put, and that a more exhaustive study of the question, although of undoubted interest, must be deferred to a later date.

SECTION VI

Administration.

ARTICLE 10. — In view of the general character of the Convention, the Commission did not feel that they should enjoin an agreement between the riparian States of an international waterway with the object of a joint administration. Neither did it seem possible to go further than to record the wish that there should be drawn up regulations for navigation which should be as nearly uniform as possible. In fact, as the Convention is subject to the jurisdiction of the League of Nations, any dispute arising out of an agreement or regulation of this nature would have had to go before the Permanent Communications and Transit Committee and the Permanent Court of International Justice, which would thus, to all intents and purposes, have been led to legislate for the administration of the majority of international waterways.

In connection with the preamble, it was explained that on international waterways navigation regulations might only prohibit the free exercise of towage when this was rendered necessary by technical conditions, and would in consequence *facilitate the freedom of navigation*. The Polish delegation had proposed to exclude towage from freedom of navigation.

ARTICLE 11. — The provision under which all the various International Commissions comprising representatives of States other than the States riparians of the international waterway shall come under the category of the organisations provided for in Article 24 of the Covenant of the League of Nations, is not to be taken as giving a legal interpretation of the said Article 24. In particular, it is not implied that these international commissions do not already fall within the scope of this article, nor, on the other hand, is the opposite interpretation to be inferred.

In the belief that the River Commissions would, within their own sphere, practise international co-operation in accordance with the spirit of the League of Nations,

the Commission have meant to place on record their very strong view that, in conformity with this spirit (subject to certain reservations which are explained in the article itself), these bodies should be inspired in their work solely by the interest of navigation.

The International Commissions can evidently exercise their powers only over those parts of a waterway which are placed under their jurisdiction.

SECTION VII

Miscellaneous Provisions.

ARTICLES 12, 13, 14, 15. — *Vide* the commentary on the corresponding articles of the Convention on Freedom of Transit. With regard to Article 12, the Swiss delegation had proposed, for the Convention on the International Regime of Waterways, an article similar to that which it had put forward for the Convention on Freedom of Transit (1). According to this article, it was forbidden, in time of war, to deprive any State not having access to the sea of freedom of navigation on the international waterways flowing through the zone of hostilities, unless another waterway was thrown open to it to serve as its access to the sea, failing which the latter State would be relieved of all its obligations as a Member of the League of Nations.

For the reasons already explained in connection with the Convention on Freedom of Transit, the Commission decided not to depart from the general form of Article 12.

In accordance with most of the historical precedents, Article 14 excludes certain vessels from the scope of the Convention.

ARTICLE 16. — After extremely lengthy discussions, which merely demonstrated the impossibility of arriving at any agreement, the Commission confined itself to excluding local transport from the application of the Convention.

The Belgian, British, Dutch, Greek, Japanese and Swiss delegations, which considered that a stipulation of this nature would not guarantee freedom of navigation, proposed to admit in principle absolute Freedom of Navigation, without the right of reserving local transport in favour of the flag of the riparian States, unless special provisions to this effect had been included in the act of navigation of any particular waterway. The Greek delegation went further, and declared that the inclusion of this article threatened to constitute a monopoly of the interior trade of international rivers for the exclusive benefit of the riparian States. It was of opinion, moreover, that such a course was in opposition not only to previous treaties on the subject, but also to Article 332 of the Treaty of Versailles, and corresponding articles of the other treaties, since none of these contained any restrictions on free navigation on international rivers, thus giving evidence of a liberal policy of a very high order. The Dutch delegation attached special importance to the fact that the principle of the assimilation of non-riparians with regard to local transport had been strongly advocated by France, Great Britain and Sardinia at the Congress of Paris in 1850, and was recognised by the Congo Act of 1885 as forming part of international common law.

As against this, the Chinese, Czecho-Slovak, Polish and Serb-Croat-Slovene delegations, and the Roumanian delegation in particular, insisted that the diametrically opposite principle should be embodied in the Convention. The Roumanian delegation declared that the carrying out of local transport within the territory of a State, under a foreign flag, was calculated to bring in its train not only the ruin of local enterprise in navigation, but also, as a result of competition with the railways, serious harm to the economic life of the sovereign State. The Polish delegation added that, particularly as regards States which had to carry out important works in order to use their waterways, navigation would soon have to become a State monopoly, in order that the State might recover the expenses it would have to bear, while at the same time developing the service; and that the regime of navigation would thus approximate more and more closely to that of railways; in these conditions, if national private

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 292 *et seq.*

navigation companies for internal navigation were no longer authorised, a sovereign State would still less permit foreign undertakings to exercise, even on international waterways, an industry prohibited to its own nationals. Not only did the Polish delegation oppose the granting of freedom for local transport to any flag other than that of the sovereign State, but it also reserved its opinion with regard to all freedom of navigation other than freedom of transit on navigable waterways.

The Commission discussed two texts in succession with the object of arriving at a compromise. The first admitted the principle of freedom to carry out local transport, subject to exceptions contained in acts of navigation; the second adopted the contrary principle and reserved this right, subject likewise to exceptions. It was not found possible to adopt either of these texts. The same fate befell the following text put forward by the Belgian delegation and supported by the Japanese delegation :—

“ Subject to the provisions contained in Article 17, the present Convention does not apply to the local transport of passengers and goods between ports situated under the sovereignty or authority of one and the same State. Nevertheless, unless such transport be reserved by that State to its own flag, no distinction may be made in this respect between the flags of the other High Contracting Parties, except when justified by special economic, topographical and technical conditions. ”

The French delegation proposed to allow the right of reserving local transport as far as all international waterways, other than those of more general international interest (that is to say, those placed under the jurisdiction of international commissions composed of representatives of States other than riparian States) were concerned, but this proposition likewise failed to meet with agreement.

Minor discussions took place as to whether, if the right to reserve local transport were allowed, riparian States were at liberty to use this right to discriminate in favour, not of their own flag, but of that of another State, either a co-riparian of the same international waterway or even a non-riparian, but these discussions did not result in any definite conclusions.

In the circumstances, the Commission decided to exclude from the scope of the Convention the question of the right of carrying out local transport of passengers and goods between ports situated under the sovereignty or authority of one and the same State, deeming it best that the decision as to such transport should be left entirely to the special agreements, acts of navigation or custom governing each waterway. The Czecho-Slovak, Polish, Roumanian and Serb-Croat-Slovene delegations, however, declared their inability to associate themselves with either the maintenance or restoration of “ pre-war custom. ”

The words *local transport* in this article should be interpreted as follows : the words *local transport* signify transport other than imports, exports or traffic in transit, with or without transshipment from one vessel to another, with or without unloading on to a quay, with or without warehousing *en route*. In the latter case, continuity of transport is not considered to have been interrupted, whilst, on the other hand, any intermediate railway transport would constitute such an interruption. For purposes of clearness, the following three illustrations may be given :—

1. “ Free ” goods are transhipped in a port, then declared in consumption and, finally, are reforwarded to another port belonging to the same State; this last stage constitutes local transport.

2. Goods liable to customs duty have been “ cleared ” (*dédouanées*) in a port but not transhipped. Their subsequent transport to another port of the same State does not constitute local transport.

3. Goods liable to customs duty have been “ cleared ” and transhipped, but are covered by a through bill of lading; their subsequent transport to the port of destination does not constitute local transport.

ARTICLES 17 *et seq.* — *Vide* the commentary on the corresponding articles of the Convention on Freedom of Transit (1).

(1) See *Verbatim Records and Texts relating to the Convention on Freedom of Transit*, p. 293.

APPENDIX TO CHAPTER III

The motives in support of the recommendation of the Draft Convention on the Right to a Flag of States without access to the sea are to be found on p. 69 in connection with Article 3 of the Draft Convention on Waterways (1).

(1) See p. 420.

SECTION V

DRAFT CONVENTION ON THE REGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN

*(Text prepared by the Committee on Navigable Waterways
and referred to the Drafting Committee.)*

PREAMBLE

The High Contracting Parties, being desirous of applying to the waterways situated under their sovereignty or authority the principle of freedom of communications in conformity with Article 23 e) of the Covenant of the League of Nations, do hereby enact the provisions of the present Convention concerning the regime of certain of these waterways defined below in Article 1 as being of international concern.

ARTICLE 1

Definition.

In applying the present Convention, the following are declared to be navigable waterways of international concern :

I. — All parts which are naturally navigable, both to and from the sea, of a waterway which, in its course, naturally navigable both to and from the sea, divides or crosses different States, and also all parts of any other waterway naturally navigable both to and from the sea, which connects with the sea a waterway naturally navigable which divides or crosses different States.

It is understood that :

(a) The fact of transhipment from one vessel to another is not excluded by the words *navigable both to and from the sea*;

(b) Any natural waterway, or part of a natural waterway, is said to be naturally navigable if it is at present used for ordinary commercial navigation, or is capable, by reason of its natural conditions, of being so used;

(c) By *ordinary commercial navigation* is to be understood navigation which, in view of the economic conditions of the riparian countries, is commercially and normally practicable;

(d) Tributaries are to be considered as separate waterways;

(e) Lateral canals, constructed in order to remedy the defects of a waterway included in the above definition, are assimilated thereto;

(f) All the riparians of a navigable waterway of international concern and of its tributaries of international concern shall be considered as riparians.

II. — Waterways, or parts of waterways, whether natural or artificial, expressly declared as being placed under the regime of this Convention, either in unilateral acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements with the consent, in particular, of the said States.

ARTICLE 1 a)

Amongst navigable waterways of international concern, the following shall form a special category, with a view to the application of Articles 4, 9, 10 and 11 of the present Convention :—

(a) Navigable waterways for which there are International Commissions upon which non-riparian States are represented;

(b) Navigable waterways which may subsequently be placed in this category, in virtue either of unilateral declarations on the part of States under whose sovereignty or authority they are placed, or of agreements made with the consent in particular, of such States.

ARTICLE 2

Free Exercise of Navigation.

Subject to the provisions contained in Articles 4 and 14, each of the High Contracting Parties shall accord the free practice of navigation to the vessels flying the flag of any one of the other High Contracting Parties on those parts of waterways specified above which may be situated under its sovereignty or authority.

ARTICLE 3

Equality of Treatment.

In the practice of such navigation, and subject to the provisions referred to in Article 2, the subjects, property and flags of all the Contracting Parties shall be treated in every respect on the basis of absolute equality, no distinction being made between the subjects, property,—either by reason of the point of departure or destination, or of the direction of the traffic—and flags of the different riparian States, including the riparian State under whose sovereignty or authority the part of the waterway in question may be situated, or between the subjects, property and flags of riparian and non-riparian States, it being understood, in consequence, that no exclusive rights of navigation shall be granted on such navigable waterways to companies or to private individuals, and that in so far as concerns the application of the present article, the High Contracting Parties recognise the maritime flag of vessels belonging to any High Contracting Party not possessing a sea-coast when they are registered in the one place situated in its territory selected as the port of registration for such vessels.

ARTICLE 4

Restrictions.

As an exception to the two preceding Articles, and in the absence of any convention or obligation to the contrary :—

(1) A riparian State situated on a natural system of navigable waterways of international concern is entitled to reserve for its own flag the transport of passengers and goods loaded at one port placed under its sovereignty or authority and unloaded at another port placed under its sovereignty or authority. A State which does not make use of these powers may refuse the benefit of equality of treatment as regards such transport to any co-riparian State which does make use of it.

On the navigable waterways referred to in Article 1 a), and except when complete freedom has already been proclaimed in a previous navigation act or may subsequently be proclaimed unanimously by the States represented on the international Commission, the Navigation Act shall only leave the riparian States the right to reserve the local transport of passengers and goods which are either national or nationalised.

(2) When a natural system of navigable waterways of international concern, which does not include waterways of the kind referred to in Article 1 a), only separates or

passes through two States, and provided that these two States are in agreement, they are entitled to reserve for their own flags the transport of passengers and goods between two ports situated on the said system, unless this transport takes place between two ports not situated under the sovereignty or authority of one and the same State, in the course of a voyage which is effected without transshipment and which includes a sea passage or passage over a navigable waterway of international concern not belonging to the above-mentioned system.

ARTICLE 5

Administrative Measures.

On the waterways or parts of waterways provided for in Article 1 and situated under its sovereignty or authority, each of the High Contracting Parties reserves to itself the right which it at present enjoys of issuing regulations and of taking the necessary measures for the general policing of the country, by the application of laws and regulations with regard to customs, public health, precautions against diseases of animals and plants, emigration, immigration, and the import and export of prohibited goods, it being understood that these stipulations and measures, which shall be reasonable and shall be applied on a basis of absolute equality to the nationals, property and flags of every one of the High Contracting Parties, including the Contracting Party by which they are issued, must not unduly impede the free practice of navigation.

ARTICLE 6

Charges for Services rendered.

No dues of any kind, other than dues in the nature of payment for services rendered and intended solely to cover equitably the cost of maintaining the navigability of the waterway, or of improving it and its approaches or to meet expenditure incurred in the interests of navigation, shall be levied anywhere throughout the course of an international waterway, or at its outlet. The tariffs shall be based on such expenses, and the schedules posted up in the ports. These dues shall be levied in such a manner as to render unnecessary any detailed examination of cargo, except in cases of suspected fraud or contravention, and both as regards their amount and the method of their application, to facilitate international traffic as much as possible.

ARTICLE 7

Transit, Customs Formalities.

As regards customs formalities, the transit of vessels, passengers and goods on waterways of international concern, shall be effected under the conditions established by the Convention on Freedom of Transit. In cases where transit takes place without transshipment, the following additional provisions shall be applicable.

When the two banks of a waterway of international concern are within the same State, the customs formalities on goods in transit, after they have been declared and subjected to a summary inspection, will be limited to placing them under seal or padlock or in the custody of customs agents.

When a waterway of international concern forms the frontier between two States, vessels, passengers and goods passing in transit shall be exempt from all customs formalities except in these cases in which there are valid reasons of a practical nature for carrying out customs formalities in the part of the river which forms the frontier, but such formalities must not interfere with the facilities of navigation.

The dues provided for and authorised in Article 3 of the Convention on Freedom of Transit shall not apply to the transit of vessels, passengers and goods on waterways of international concern, it being understood that vessels in transit may be called upon to provide and bear the cost of the board and lodging of customs agents who may be strictly necessary for purposes of supervision.

ARTICLE 8

Use of Ports.

1. As regards the use of all the ports situated on a navigable waterway of international concern, and subject to the provisions of Articles 4, 14 and 16, the subjects, property and flags of all the High Contracting Parties shall enjoy equal treatment with the subjects, property and flags of the riparian State under whose sovereignty or authority the port is situated, particularly as regards port dues and charges; it being understood that the goods to which the present paragraph shall apply are those originating in, or proceeding from or to, the territory of one of the High Contracting Parties.

2. The equipment of ports situated on a navigable waterway of international concern and the facilities granted to navigation in these ports shall be available for public use to such reasonable degree as corresponds with the free and effective practice of navigation.

3. For the application of customs or similar duties levied on imports and exports through the said ports, no difference shall be made by reason of the flag flown by the vessel carrying, or to carry, the goods, whether it be national or belonging to any one of the High Contracting Parties.

4. The State under whose sovereignty or authority a port is situated may withdraw the benefits of the preceding paragraph from any vessel if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

5. In the absence of special circumstances which would adequately justify an exception from this provision, on account of economic necessity, these dues must not exceed those which are levied on the other frontiers of the State concerned, on goods imported and exported under the general conditions of the legislation of this State.

All the facilities which may be accorded, by the High Contracting Parties, on other land or water routes, or in other ports, for the import and export of goods, shall be equally accorded to imports and exports under the same conditions by the navigable waterway and the ports referred to above.

ARTICLE 9

Works.

1. Each of the riparian States is bound, on the one hand, to abstain from any action likely to prejudice navigability or to reduce facilities for navigation, and, on the other hand, to take suitable measures as rapidly as possible to remove any obstructions and accidental dangers to navigation.

2. If this navigation involves regular upkeep, each of the riparian States is under an obligation towards the other States to take the steps and to carry out the works necessary for this purpose on its territory, as rapidly as possible, having regard to the state of navigation, at any period, and also to the economic condition of the districts served by the navigable waterway.

In the absence of any convention to the contrary, each of the riparian States will be entitled to demand from the other States, basing its demand on valid reasons, that they shall bear an equitable share in the cost of such upkeep.

3. In the absence of legitimate grounds for opposition on the part of one of the riparian States, including the State which is territorially interested, based either on the actual conditions of navigability within its territory, or upon any other interests, such as, in particular, the maintenance of normal hydraulic conditions, the needs of irrigation, the utilisation of hydraulic power, or the necessity of constructing other more advantageous routes for communication, a riparian State may not refuse to carry out at the request of any other riparian State the works necessary for the improvement of navigability, provided that the latter State offers to pay the cost and also to bear an equitable share of the excess costs of upkeep. Nevertheless, it is understood that

these works cannot be undertaken so long as the State on whose territory they are to be carried out is opposed to them on grounds of vital interests.

4. In the absence of any convention to the contrary, the State which is bound to carry out the works of upkeep may be released from this obligation if, with the consent of all the co-riparian States, one or more of them undertake to carry them out in its place; as regards works for improvement, the State which is bound to carry them out will be freed from the obligation if it authorises the State which proffered the request to carry them out in its place; the carrying out of works by States other than the State territorially interested, or their participation in the cost of these works, shall be assured without prejudice as regards the State territorially interested, to its rights of control and administration in respect of these works and to the prerogatives of its sovereignty or authority over the waterway.

5. On the waterways referred to in Article 1 (a), the provisions of the present Article are applicable subject to any stipulations contained in treaties, conventions or navigation acts which determine the powers and responsibilities of the international commission in respect of works.

Subject to any special provisions contained in the said treaties, conventions or navigation acts, which exist or may be concluded :—

(a) Decisions in regard to works will be made by the Commission;

(b) The settlement, under the conditions laid down in Article 19 below, of any dispute which may arise as a result of these decisions, may always be demanded on the grounds that these decisions are *ultra vires*, or that they infringe international conventions governing navigable waterways. A request for a settlement under the aforesaid conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decisions of the Commission shall be in conformity with the provisions of the present Article.

6. Notwithstanding the provisions of the second paragraph of the present article, a riparian State may, subject to any convention to the contrary, close a waterway to navigation either wholly or in part, provided that a riparian State or all the States represented on the International Commission, if one exists, consent to this closing.

As an exception, a navigable waterway of international concern not referred to in Article 1 (a), may be closed by one of the riparian States if the navigation on it is inconsiderable and if this State is justified by the fact that its economic interest is obviously greater than that of navigation. In this case the closing may take place when notice of such action is given one year previously and subject to an appeal on the part of another riparian State under the conditions laid down in Article 19. If necessary, the decision will prescribe the conditions under which the closing shall be carried out.

7. Should access to the sea be afforded by a navigable waterway of international concern with several branches, situated in the territories of one and the same State, the provisions of paragraphs 1, 2 and 3 of this article shall apply only to the branch or branches considered necessary to give full access to the sea.

ARTICLE 10

Regulation of Navigation.

Subject to any stipulations to the contrary contained in special agreements or treaties, the administration of international waterways will be exercised by each of the riparian States under whose sovereignty or authority the waterway is situated. In particular, each of the said riparian States is both entitled and bound to publish regulations for the navigation of the waterway, and to superintend their application. These regulations shall be framed and applied in such a manner as to facilitate freedom of navigation in the conditions provided for in the present Convention. The method of procedure for such matters as the instituting of proceedings, prosecutions and the repression of acts committed to the prejudice of navigation shall, in particular, be as prompt as possible.

The High Contracting Parties recognise, however, the great desirability of an understanding between riparian States of the same waterway of international concern

regarding its administration, and especially of the adoption of navigation rules throughout the course of the waterway as nearly uniform as possible, compatible with local conditions.

Monopolised public services for towage or haulage may be established with a view to facilitating navigation, by the unanimous consent of the riparian States or of the States represented on the International Commission, if one exists.

ARTICLE 10 a)

New Article.

1. Treaties, conventions, and agreements concluded between the Contracting States in respect of navigable waterways before the date on which the present Convention comes into force are not abrogated as a result of such coming into force as far as the States signatories of the above-mentioned treaties, conventions and agreements are concerned.

Nevertheless, the Contracting States undertake not to apply among themselves such of the provisions of the above-mentioned treaties, conventions and agreements as would be in conflict with the regulations of the present Statute.

2. Financial obligations undertaken by one of the Contracting States towards another Contracting State, in pursuance of Article 9, Section 3 of the present Statute, remain valid even if the State which has undertaken them should denounce the present Convention unless an agreement to the contrary has been made with the creditor State.

ARTICLE 10 b)

If on a waterway of international concern one or more of the riparian States do not take part in the present Convention, the financial obligations undertaken by each of the Contracting States in virtue of Article 9 of the present Convention shall not exceed those to which each would have been subject if all the riparian States had been Contracting Parties to the present Convention.

ARTICLE 11

River Commissions.

In the event of certain functions being entrusted, by virtue of one of the special agreements or treaties referred to in the preceding article, to an International Commission composed of representatives of States other than the riparian States of the navigable waterway, such a Commission shall, subject to the stipulations contained in Article 9, be inspired solely by the interests of navigation, and shall come under the category of the organisations provided for in Article 24 of the Covenant of the League of Nations. By this it is understood that it will exchange directly with the appropriate organisations of the League of Nations any useful information, and will submit an annual report to the League of Nations.

The powers of the Commissions provided for in the preceding paragraph shall be determined by the Act of Navigation of each waterway, and shall at least include the following :—

(a) The Commission shall be entitled itself to draw up such navigation regulations as it thinks fit, and shall receive advice of all other navigation regulations.

(b) It shall be furnished by all the riparian States with official reports of all schemes for the improvement of the waterway.

(c) It shall inform the riparian States of any action which may be advisable for the upkeep of the works and the maintenance of good navigation conditions.

(d) Where the Act of Navigation does not include special regulations for the levying of dues and charges, the Commission shall be entitled to approve the levying of dues and charges under the conditions prescribed in Article 6 of the present Convention.

ARTICLE 12

Application of the Convention in time of War.

The present Convention does not govern the rights and obligations of belligerents and of neutrals in time of war. With this reservation, the present Convention shall be valid in time of war in the measure compatible with these rights and these obligations.

ARTICLE 13

Relationship of the present obligations to the other obligations of the Members of the League of Nations.

The present Convention does not impose on any of the High Contracting Parties any obligation which would conflict with its rights and obligations as a Member of the League of Nations.

ARTICLE 14

Vessels of War, etc.

Subject to any agreements to the contrary to which the State territorially interested is, or may be, a party, this Convention does not apply to the navigation of vessels of war or of those connected with the policing or administration of the river, or, in general, with the exercise of any public authority.

ARTICLE 15

Relations with States not adhering to the present Convention.

Each of the High Contracting Parties undertakes not to accord to a State which does not adhere to the present Convention, either by agreement or in any other manner, any treatment which would be contrary to the provisions of the present Convention if concluded between High Contracting Parties.

ARTICLE 15 a)

Exceptions may be made in special cases and for as short a period as possible, to the terms of the preceding articles in virtue of special or general measures which any of the High Contracting Parties may be obliged to take in case of grave events affecting the safety of the State or the vital interests of the country, it being understood that the principle of freedom of navigation, and especially of communication between riparian States and the sea, should be observed as far as possible.

ARTICLE 17

Greater Facilities.

The present Convention must not be understood to imply in any way, on the one hand, the withdrawal of still greater facilities granted for freedom of navigation on any waterway of international concern, under conditions compatible with the principle of equality between the subjects, property and flags of all the Contracting Parties, as defined in and applied to the present Convention, or, on the other hand, the prohibition of the granting of such greater facilities in the future.

ARTICLE 17 a)

In conformity with Article 23 e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any one

of the stipulations of the present Convention, on the whole or part of its territory, on the grounds of the grave economic situation arising out of devastations perpetrated on its soil during the war of 1914-1918, shall be deemed to be relieved temporarily from the obligations entailed by the application of the said stipulation, it being understood that the principle of freedom of navigation must be observed to the utmost possible extent.

ARTICLE 18

Relationship of the present Convention on the Treaties of Peace.

As regards the Contracting States who are signatories of the Treaties of Peace concluded with Germany on June 28th, 1919, with Austria on September 10th, 1919, with Bulgaria on November 27th, 1919, with Hungary on June 4th, 1920, the present Convention in no way affects their rights and obligations as established by the said treaties.

ARTICLE 19

Settlement of Disputes.

Without prejudice to the provisions of Section 5 of Article 9, and in the absence of any direct agreement between the parties concerned, any disputes as to the interpretation or application of the present Convention shall be brought before the Permanent Court of International Justice, unless by the application of a special Convention or of a general arbitration clause, a settlement of the dispute be effected, either by arbitration or in any other manner.

The procedure shall be in the form of a request by the Government which intends to submit the dispute to the Court.

Nevertheless, in order as far as possible to settle these disputes in a friendly manner, the Contracting States undertake before taking any legal action and having due regard to the rights and attributions of the Council and Assembly, to submit these disputes for an advisory opinion to any body instituted by the League of Nations as the advisory and technical body for the Members of the League in matters concerning communications and transit. In urgent cases, a provisional opinion may be given recommending any temporary measures destined more particularly to restore the facilities of free transit which may have existed before execution of the act or deed which gave rise to the dispute.

ARTICLE 21

Ratification.

The Secretary-General of the League of Nations shall transmit a certified copy of the present Draft Convention to each Member of the League of Nations, as well as to each Power to which the Council of the League of Nations may decide that the present Draft Convention should be communicated.

The Secretary-General of the League of Nations shall be notified of the official ratifications of the present Convention and shall register them.

ARTICLE 22

Notification.

As soon as the ratifications of three of the Members or Powers referred to in the preceding article have been registered with the Secretariat, the Secretary-General shall so notify all the Members or Powers referred to in the preceding Article.

ARTICLE 23

Coming into force of the Convention.

The present Convention shall come into force thirty days after the date on which such notification is issued by the Secretary-General of the League of Nations, but it

shall then be binding only upon those Members or Powers which have registered their ratifications with the Secretariat, or have already contracted to adhere thereto. Thereafter, this Convention will come into force for any other Member or Power thirty days after the date on which the ratification of that Member or Power is registered with the Secretariat.

ARTICLE 24

Date of Application of the Convention.

Each Member which ratifies this Convention agrees to bring its provision into operation not later than July 1st, 1922, and to take such action as may be necessary to make those provisions effective.

Each Power which ratifies this Convention after having received communication from the Council of the League of Nations agrees to bring its provisions into operation not later than eighteen months after the date of the said communication, and to take such action as may be necessary to make these provisions effective.

ARTICLE 25

Denunciation.

Any Member or Power which has ratified this Convention may denounce it after the expiration of five years from the date on which the Convention comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 26

Revision.

At least once in ten years, the Permanent Communications and Transit Committee shall present to the General Communications and Transit Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 27

Official Text.

The French and English texts of this Convention shall both be authentic.

NEW ARTICLE

A national navigable waterway shall not be considered as of international concern from the sole fact that it crosses or delimits zones or enclaves of a very small extent and population as compared with those of the territories crossed, and which form detached parts or settlements belonging to a State other than that to which the said river belongs, save for this exception, throughout the whole of its navigable course.

NEW ARTICLE

The present Convention shall not be applicable to a navigable waterway of international concern having only two riparians, which separates, for a great part of its course, a Contracting State from a non-Contracting State, whose Government is not recognised by the former at the time of the signature of the present Convention, unless an agreement has been concluded between the two, establishing for the waterway in question an administrative and customs regime which gives satisfactory security to the Contracting State.

SECTION VI

STATUTE ON THE REGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN

(Text prepared by the Drafting Committee, in accordance with the text drawn up by the Committee on Navigable Waterways, and submitted to the Conference.)

ARTICLE 1

In the application of the Statute, the following are declared to be navigable waterways of international concern :

1. All parts which are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States.

It is understood that :

(a) Transshipment from one vessel to another is not excluded by the words *navigable to and from the sea*;

(b) Any natural waterway or part of a natural waterway, is termed *naturally navigable* if now used for ordinary commercial navigation, or capable by reason of its natural conditions of being so used; by *ordinary commercial navigation* is to be understood navigation which, in view of the economic condition of the riparian countries, is commercially and normally practicable;

(c) Tributaries are to be considered as separate waterways;

(d) Lateral canals constructed in order to remedy the defects of a waterway included in the above definition are assimilated thereto;

(e) The different States separated or traversed by a navigable waterway of international concern, including its tributaries of international concern, are deemed to be riparian States.

2. Waterways or parts of waterways, whether natural or artificial, expressly declared to be placed under the regime of the General Convention on Navigable Waterways either in unilateral Acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements made with the consent of the said States.

ARTICLE 1 a)

For the purpose of Articles 4, 9, 10 and 11 of this Statute, the following shall form a special category of navigable waterways of international concern :

(a) Navigable waterways for which there are international Commissions upon which non-riparian States are represented;

(b) Navigable waterways hereafter placed in this category either in pursuance of unilateral Acts of the States under whose sovereignty or authority they are situated, or in pursuance of agreements made with the consent, in particular, of such States.

ARTICLE 2

Subject to the provisions contained in Articles 4 and 14, each of the Contracting States shall accord free exercise of navigation to the vessels flying the flag of any one of the other Contracting States on those parts of navigable waterways specified above which may be situated under its sovereignty or authority.

ARTICLE 3

In the exercise of navigation referred to above, and subject to the provisions referred to in Article 2, the nationals, property and flags of all Contracting States shall be treated in all respects on a footing of perfect equality. No distinction shall be made between the nationals, the property,—based either on its point of departure or destination, or on the direction of the traffic—and the flags of the different riparian States, including the riparian State exercising sovereignty or authority over the portion of the navigable waterway in question; similarly, no distinction shall be made between the nationals, the property and the flags of riparian and non-riparian States. It is understood, in consequence, that no exclusive right of navigation shall be accorded on such navigable waterways to companies or to private persons.

With a view to the application of these provisions, Contracting States recognise the flag of vessels of any Contracting State not possessing a sea-coast when they are registered at some one specified place situated in its territory, and constituting the port of registry for such vessels.

ARTICLE 4

As an exception to the two preceding Articles, and in the absence of any Convention or obligation to the contrary :

1. A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its sovereignty or authority and unloaded at another port also situated under its sovereignty or authority. A State which does not reserve the above-mentioned transport to its own flag may, nevertheless, refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it.

On the navigable waterways referred to in Article 1 *a*), the Act of Navigation shall only allow to riparian States the right of reserving the local transport of passengers or of goods which are of national origin or are nationalised. In every case, however, in which greater freedom of navigation may have been already established in a previous Act of Navigation, this freedom shall not be reduced.

2. When a natural system of navigable waterways of international concern which does not include waterways of the kind referred to in Article 1 *a*), separates or crosses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers and goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same State, in the course of a voyage effected without transshipment on the said system involving a sea-passage or passage over a navigable waterway of international concern which does not belong to the said system.

ARTICLE 5

Each of the Contracting States maintains its existing right on the navigable waterways or parts of navigable waterways referred to in Article 1 and situated under its sovereignty or authority to enact stipulations and to take the necessary measures for policing the territory and applying the laws and regulations relating to customs, public health, precautions against the diseases of animals and plants, emigration or immigration, and to the import or export of prohibited goods; it being understood

that such stipulations and measures must be reasonable, must be applied on a footing of absolute equality between the nationals, property and flags of any one of the Contracting States, including the State which is their author, and must not without good reason impede the free exercise of navigation.

ARTICLE 6

No dues of any kind may be levied anywhere on the course or at the mouth of a navigable waterway of international concern, other than dues in the nature of payment for services rendered and intended solely to cover in an equitable manner the expenses of maintaining and improving the navigability of the waterway and its approaches, or to contribute to expenditure incurred in the interest of navigation. These dues shall be fixed in accordance with such expenses, and the tariff of dues shall be posted in the ports. These dues shall be levied in such a manner as to render unnecessary a detailed examination of the cargo except in cases of suspected fraud or infringement of regulations, and so as to facilitate international traffic as much as possible, both as regards their rates and the method of their application.

ARTICLE 7

The transit of vessels and of passengers and goods on navigable waterways of international concern shall so far as customs formalities are concerned be governed by the conditions laid down in the Statute of Barcelona of April 14, 1921, on Freedom of Transit. Whenever transit takes place without transshipment the following additional provisions shall be applicable :

(a) When both banks of a waterway of international concern are within one and the same State, the customs formalities imposed on goods in transit after they have been declared and subjected to a summary inspection shall be limited to placing them under seal or padlock, or in the custody of customs officers.

(b) When a navigable waterway of international concern forms the frontier between two States, vessels, passengers and goods in transit shall while *en route* be exempt from any customs formality, except in cases in which there are valid reasons of a practical character for carrying out customs formalities at a place on the part of the river which forms the frontier, and this can be done without interfering with navigation facilities.

The transit of vessels, passengers and goods on navigable waterways of international concern must not give rise to the levying of any duties whatsoever, whether prohibited by the Statute of Barcelona on Freedom of Transit or authorised by Article 3 of that Statute. It is nevertheless understood that vessels in transit may be charged for the board and lodging of any customs officers who are strictly required for supervision.

ARTICLE 8

Subject to the provisions of Articles 4 and 14, the nationals, property and flags of all the Contracting States shall, in all ports situated on a navigable waterway of international concern, enjoy, in all that concerns the use of the port, including port dues and charges, a treatment equal to that accorded to the nationals, property and flags of the riparian State under whose sovereignty or authority the port is situated. It is understood that the property to which the present paragraph relates is property originating in, coming from or destined for, one or other of the Contracting States.

The equipment of ports situated on a navigable waterway of international concern, and the facilities afforded in these ports to navigation, must not be withheld from public use to an extent beyond what is reasonable and fully compatible with the free exercise of navigation.

In the application of customs or other analogous duties, levied on the occasion of the importation or exportation of goods through the aforesaid ports, no difference shall be made by reason of the flag of the vessel on which the transport has been or

is to be accomplished, whether this flag be the national flag or that of any of the Contracting States.

The State under whose sovereignty or authority a port is situated may withdraw the benefits of the preceding paragraph from any vessel if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

In the absence of special circumstances justifying an exception on the ground of economic necessities, the duties provided for above must not be higher than those levied on the other customs frontiers of the State interested, on goods of the same kind, source and destination. All facilities accorded by the Contracting States to the importation or exportation of goods by other land or water routes, or in other ports, shall be equally accorded to importation or exportation under the same conditions over the navigable waterway and through the ports referred to above.

ARTICLE 9

1. Each riparian State is bound, on the one hand, to refrain from all measures likely to prejudice the navigability of the waterway or to reduce the facilities for navigation, and, on the other hand, to take at the earliest possible opportunity all necessary steps for removing any accidental obstacles and dangers to navigation.

2. If such navigation necessitates regular upkeep of the waterway, each of the riparian States is bound by obligation to the others to take such steps and to execute as quickly as possible such works on its territory as are necessary for the purpose, taking account at all times of the conditions of navigation as well as of the economic state of the regions served by the navigable waterway.

In the absence of an agreement to the contrary, any riparian State will have the right, on valid reason being shown, to demand from the other riparians a reasonable contribution towards the cost of upkeep.

3. In the absence of legitimate grounds for opposition by one of the riparian States, including the State territorially interested, based either on the actual conditions of navigability in its territory, or on other interests such as, particularly, the maintenance of the normal water-conditions, requirements for irrigation, the use of water-power, or the necessity for constructing other and more advantageous ways of communication, a riparian State may not refuse to carry out works necessary for the improvement of navigability which are asked for by another riparian State, if such State offers to pay the cost of the works and a fair share of the additional cost of upkeep. It is understood, however, that such works cannot be undertaken so long as the State on the territory of which they are to be carried out objects on the ground of vital interests.

4. In the absence of any agreement to the contrary, a State which is obliged to carry out works of upkeep is entitled to free itself from the obligation, if, with the consent of all the co-riparian States, one or more of them agree to carry out the works instead of it; as regards works for improvement, a State which is obliged to carry them out shall be freed from the obligation if it authorises the State which made the request to carry them out instead of it. The carrying out of works by States other than the State territorially interested, or the sharing by them in the cost of works, shall be so arranged as not to prejudice the rights of the State territorially interested as regards the supervision and administrative control over the works, or its sovereignty and authority over the navigable waterway.

5. On the waterways referred to in Article 1 *a*), the provisions of the present Article are to be applied subject to the terms of the Treaties, Conventions, or Navigation Acts which determine the powers and responsibilities of the International Commission in respect of works.

Subject to any special provisions in the said Treaties, Conventions, or Navigation Acts, which exist or may be concluded :

(*a*) Decisions in regard to works will be made by the Commission.

(*b*) The settlement, under the conditions laid down in Article 19 below, of any dispute which may arise as a result of these decisions, may always be demanded on the

grounds that these decisions are *ultra vires*, or that they infringe international Conventions governing navigable waterways.

A request for a settlement under the aforesaid conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decision of this Commission shall be in conformity with the provisions of the present article.

6. Notwithstanding the provisions of paragraph 1 of this Article, a riparian State may, in the absence of any arrangement to the contrary, close a waterway wholly or in part to navigation with the consent of all the riparian States or of all the States represented on the International Commission if one exists.

As an exceptional case one of the riparian States of a navigable waterway of international concern not referred to in Article 1 *a*) may close the waterway to navigation, if the navigation on it is of very small importance and if the State in question can justify its action on the ground of an economic interest clearly greater than that of navigation. In this case the closing to navigation may only take place after a year's notice and subject to an appeal on the part of any other riparian State under the conditions laid down in Article 19. If necessary the judgment shall prescribe the conditions under which the closing to navigation may be carried into effect.

7. Should access to the sea be afforded by a navigable waterway of international interest through several branches, all of which are situated in the territory of one and the same State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply only to the principal branches deemed necessary for providing free access to the sea.

NEW ARTICLE 9 *a*)

If on a waterway of international concern one or more of the Riparian States are not parties to this Statute, the financial obligations undertaken by a Contracting State in pursuance of Article 9 shall not exceed those to which they would have been subject if all the riparian States had been parties.

ARTICLE 10

In the absence of any contrary stipulations contained in a special agreement or treaty, for example, existing Conventions concerning customs and police measures and sanitary precautions, the administration of navigable waterways of international concern is exercised by each of the riparian States under whose sovereignty or authority the navigable waterway is situated. Each of such riparian States has *inter alia*, the power and duty of publishing regulations for the navigation of such waterway and of seeing to their execution. These regulations must be framed and applied in such a way as to facilitate the free exercise of navigation under the conditions laid down in this Statute.

The rules of procedure dealing with such matters as ascertaining, prosecuting and punishing navigation offences must be such as to promote as speedy a settlement as possible.

Nevertheless the Contracting States recognise that it is highly desirable that the riparian States should come to an understanding with regard to the administration of the navigable waterway of international concern and, in particular, with regard to the adoption of navigation regulations of as uniform a character throughout the whole course of such navigable waterway as the diversity of local circumstances permits.

Public services of towage or other means of haulage may be established in the form of monopolies for the purpose of facilitating the exercise of navigation, subject to the unanimous agreement of the riparian States or the States represented on the International Commission, in the case of navigable waterways referred to in Article 1 (*a*).

ARTICLE 10 *a*)

Treaties, conventions or agreements relating to navigable waterways, concluded by the Contracting States before the coming into force of this Statute, are not, as a

consequence of its coming into force, abrogated so far as concerns the States signatories to those treaties.

Nevertheless, the Contracting States undertake not to apply among themselves any provisions of such treaties, conventions or agreements which may conflict with the rules of the present Statute (1).

ARTICLE 10 b)

If on a waterway of international concern one or more of the riparian States are not parties to this Statute, the financial obligations undertaken by each of the Contracting States in pursuance of Article 10 shall not exceed those to which they would have been subject if all the riparian States had been parties.

ARTICLE 11

If any of the special agreements or treaties referred to in the preceding Article has entrusted or shall hereafter entrust certain functions to an International Commission which includes representatives of States other than the riparian States, it shall be the duty of such Commission, subject to the provisions of Article 9, to have exclusive regard to the interests of navigation, and it shall be deemed to be one of the organisations referred to in Article 24 of the Covenant of the League of Nations. Consequently it will exchange all useful information directly with the League of Nations and its organisations, and will submit an annual report to the League.

The powers and duties of the Commissions referred to in the preceding paragraph shall be laid down in the Act of Navigation of each navigable waterway and shall at least include the following :

(a) the Commission shall be entitled to draw up such navigation regulations as it thinks necessary itself to draw up, and all other navigation regulations shall be communicated to it;

(b) it shall indicate to the riparian States the action advisable for the upkeep of works and the maintenance of navigability;

(c) it shall be furnished by each of the riparian States with official information as to all schemes for the improvement of the waterway;

(d) it shall be entitled in cases in which the Act of Navigation does not include a special regulation with regard to the levying of dues to approve of the levying of such dues and charges in accordance with the provisions of Article 6 of this Statute.

ARTICLE 12

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 13

This Statute does not impose upon a Contracting State any obligation conflicting with its rights and duties as a Member of the League of Nations.

ARTICLE 14

In the absence of any agreement to the contrary to which the State territorially interested is or may be a party, this Statute has no reference to the navigation of vessels of war or of vessels performing police or administrative functions or, in general, exercising any kind of public authority.

(1) The last paragraph of this article was omitted, and the following sentence was added to Article 8 of the Convention : *It shall not, in the absence of an agreement to the contrary, prejudice engagements entered into before the denunciation relating to a programme of works.*

ARTICLE 15

Each of the Contracting States undertakes not to grant either by agreement or in any other way, to a non-Contracting State, treatment with regard to navigation over a navigable waterway of international concern which, as between Contracting States, would be contrary to the provisions of this Statute.

ARTICLE 15 a)

The measures of a general or particular character which a Contracting state is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may, in exceptional cases and for a period as short as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of navigation, and especially communication between the riparian States and the sea, must be maintained to the utmost possible extent.

ARTICLE 17

This Statute does not entail in any way the withdrawal of greater facilities granted to the free exercise of navigation on any navigable waterway of international concern, under conditions consistent with the principle of equality laid down in this Statute, as regards the nationals, the goods and the flags of all the Contracting States. Nor does it entail the prohibition of such grant of greater facilities in the future.

ARTICLE 17 a)

In conformity with Article 23 e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of navigation must be observed as far as possible.

ARTICLE 19

Without prejudice to the provisions of paragraph 5 of Article 9, any dispute between States as to the interpretation or application of this Statute which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly to submit such disputes for an opinion to any body established by the League of Nations as the Advisory and Technical Organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for free navigation which existed before the act or occurrence which gave rise to the dispute.

NEW ARTICLE

A navigable waterway shall not be considered as of international concern on the sole ground that it traverses or delimits zones or enclaves, the extent and population

of which are small as compared with those of the territories which it traverses, and which form detached portions or establishments belonging to a State other than that to which the said river belongs, with this exception, throughout its navigable course.

NEW ARTICLE

This Statute shall not be applicable to a navigable waterway of international concern which has only two riparian States, and which separates, for a considerable distance, a Contracting State from a non-Contracting State whose Government is not recognised by the former at the time of the signing of the present Convention, until an agreement has been concluded between them establishing, for the waterway in question, an administrative and customs regime which affords suitable safeguards to the Contracting State.

NEW ARTICLE

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part, or placed under the protection, of the same sovereign State, whether or not these territories are individually Members of the League of Nations.

SECTION VII

CONVENTION AND STATUTE ON THE REGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN

(Text adopted by the Conference.)

Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the British Empire (with New Zealand and India), Spain, Esthonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Latvia, Lithuania, Luxemburg, Norway, Panama, Paraguay, the Netherlands, Persia, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Sweden, Switzerland, Czecho-Slovakia, Uruguay and Venezuela :

Desirous of carrying further the development as regards the international regime of navigation on internal waterways, which began more than a century ago, and which has been solemnly affirmed in numerous treaties,

Considering that General Conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23 (e) of the Covenant of the League of Nations,

Recognising in particular that a fresh confirmation of the principle of Freedom of Navigation in a Statute elaborated by forty-one States belonging to the different portions of the world constitutes a new and significant stage towards the establishment of co-operation among States without in any way prejudicing their rights of sovereignty or authority,

Having accepted the invitation of the League of Nations to take part in a Conference at Barcelona which met on March 10th, 1921, and having taken note of the Final Act of such Conference,

Anxious to bring into force forthwith the provisions of the Statute relating to the Regime of Navigable Waterways of International Concern which has there been adopted,

Wishing to conclude a Convention for this purpose the HIGH CONTRACTING PARTIES have appointed as their Plenipotentiaries :

The President of the Supreme Council of Albania :

The President of the Republic of Austria :

M. Henri REINHARDT, Ministerial Councillor.

His Majesty the King of the Belgians :

M. Xavier NEUJEAN, Minister for Railways, Marine, Posts and Telegraphs.

The President of the Republic of Bolivia :

M. Trifon MELEAN, Bolivian Consul in Spain.

The President of the Republic of Brazil :

His Majesty the King of Bulgaria :

M. Lubin BOCHKOFF, Civil Engineer, Assistant to the Director-General of Railways and Ports.

The President of the Republic of Chile :

The President of the Republic of China :

The President of the Republic of Colombia :

The President of the Republic of Costa Rica :

M. Manuel de PERALTA, Envoy Extraordinary and Minister Plenipotentiary
of the Republic of Costa Rica to Spain.

The President of the Republic of Cuba :

His Majesty the King of Denmark and of Iceland :

M. Peter Andreas HOLCK-COLDING, Chef de Bureau in the Ministry of
Public Works.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of
the British Dominions beyond the Seas, Emperor of India :

Sir Hubert LLEWELLYN SMITH, G.C.B., Economic Adviser to the Govern-
ment;

and for the Dominion of New Zealand :

Sir Hubert LLEWELLYN SMITH, G.C.B.;

for India :

Sir Louis James KERSHAW, K.C.S.I., C.I.E., Secretary in the Revenue and
Statistics Department in the India Office.

His Majesty the King of Spain :

The President of the Esthonian Republic :

The President of the Republic of Finland :

The President of the French Republic :

His Majesty the King of the Hellenes :

M. Pierre SCASSI, Envoy Extraordinary and Minister Plenipotentiary of His
Hellenic Majesty in Spain.

The President of the Republic of Guatemala :

Dr. Norberto GALVEZ, Guatemalan Consul-General at Barcelona.

The President of the Republic of Haiti :

The President of the Republic of Honduras :

His Majesty the King of Italy :

His Excellency M. Camillo PEANO, Minister of Public Works, Member of the
Chamber of Deputies.

M. Paolo BIGNAMI, Engineer, Member of the Chamber of Deputies, former
Under-Secretary of State.

His Majesty the Emperor of Japan :

The President of the Republic of Latvia :

M. Germain ALBAT, Under-Secretary of State for Foreign Affairs.

The President of the Lithuanian Republic :

Her Royal Highness the Grand-Duchess of Luxemburg :
M. Antoine LEFORT, Chargé d'Affaires at Berne.

His Majesty the King of Norway :

The President of the Republic of Panama :
Dr. Evenor HAZERA, Consul-General for Panama in Spain, former Under-Secretary of State.

The President of the Republic of Paraguay :

Her Majesty the Queen of the Netherlands :
Dr. C. LELY, former Minister for " Waterstaat," Commerce and Industry,
Member of the Second Chamber of the States General.
Jonkheer W. J. M. van EYSINGA, Professor of International Law in the
University of Leyden.
M. A. G. KROLLER, Member of the Economic Council of the Ministry of
Foreign Affairs.

His Majesty the Shah of Persia :
His Excellency Mirza HUSSEIN KHAN ALAI, Envoy Extraordinary and
Minister Plenipotentiary to Spain.

The President of the Polish Republic :
M. Joseph WIELOWIEYSKI.

The President of the Portuguese Republic :

His Majesty the King of Roumania :

His Majesty the King of the Serbs, Croats and Slovenes :
Dr. Ante TRESICH-PAVICHICH, Envoy Extraordinary and Minister Pleni-
potentiary to Spain and Portugal.

His Majesty the King of Sweden :

The Federal Council of the Swiss Confederation :

The President of the Czecho-Slovak Republic :
M. Bohuslav MULLER, Engineer, Secretary of State at the Ministry of Public
Works, Envoy Extraordinary and Minister Plenipotentiary.

The President of the Oriental Republic of Uruguay :
M. Benjamin FERNANDEZ Y MEDINA, Envoy Extraordinary and Minister
Plenipotentiary to Spain.

The President of the United States of Venezuela :

Who, after communicating their full powers found in good and due form, have
agreed as follows :—

ARTICLE 1

The High Contracting Parties declare that they accept the Statute on the Regime
of Navigable Waterways of International Concern annexed hereto, adopted by the
Barcelona Conference on April 19th, 1921.

This Statute will be deemed to constitute an integral part of the present Convention. Consequently, they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

ARTICLE 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by, such Treaties.

ARTICLE 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until December 1st, 1921.

ARTICLE 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

ARTICLE 5

Members of the League of Nations which have not signed the present Convention before December 1st, 1921, may accede to it.

The same applies to States not Members of the League to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

ARTICLE 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

ARTICLE 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

ARTICLE 8

Subject to the provisions of Article 2 of the present Convention, the latter may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power. It shall not, in the absence of an agreement to the contrary, prejudice engagements entered into before the denunciation relating to a programme of works.

ARTICLE 9

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done at Barcelona the twentieth day of April one thousand nine hundred and twenty-one, in a single copy which shall remain deposited in the archives of the League of Nations.

(Here follow the signatures of the Delegates.)

The British Delegate signed subject to the Declaration inserted in the Procès-Verbal of the Meeting of April 10th, 1921, as to the British Dominions which have not been represented at the Barcelona Conference (1).

STATUTE ON THE REGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN

ARTICLE 1

In the application of the Statute, the following are declared to be navigable waterways of international concern :

1. All parts which are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and

(1) The text of the Declaration reads as follows :—

“ At the time of signing this Convention, and as the representative of the British Empire, I declare that my signature is not binding upon the British Dominions of Canada, Australia and South Africa, which are individual Members of the League of Nations and have not sent representatives to this Conference. The right of each of these three Dominions to sign the Convention, or to accede to it at a later date, is reserved, it being understood that, if they do not sign or accede to it, they shall not be entitled to benefit by the Convention.

“ I also reserve the right to declare, at the time of ratification, whether the ratification includes the Dominion of Newfoundland. If it is not included in the ratification, the Dominion of Newfoundland will not be entitled to benefit by the Convention. ”

from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States.

It is understood that :

(a) Transshipment from one vessel to another is not excluded by the words “ navigable to and from the sea ”;

(b) Any natural waterway or part of a natural waterway, is termed “ naturally navigable ” if now used for ordinary commercial navigation, or capable by reason of its natural conditions of being so used; by “ ordinary commercial navigation ” is to be understood navigation which, in view of the economic condition of the riparian countries, is commercially and normally practicable;

(c) Tributaries are to be considered as separate waterways;

(d) Lateral canals constructed in order to remedy the defects of a waterway included in the above definition are assimilated thereto.

(e) The different States separated or traversed by a navigable waterway of international concern, including its tributaries of international concern, are deemed to be “ riparian States. ”

2. Waterways, or parts of waterways, whether natural or artificial, expressly declared to be placed under the régime of the General Convention regarding navigable waterways of international concern either in unilateral Acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements made with the consent, in particular, of such States.

ARTICLE 2

For the purposes of Articles 5, 10, 12 and 14 of this Statute, the following shall form a special category of navigable waterways of international concern :

(a) Navigable waterways for which there are international Commissions upon (which non-riparian States are represented;)

(b) Navigable waterways which may hereafter be placed in this category, either in pursuance of unilateral Acts of the States under whose sovereignty or authority they are situated, or in pursuance of agreements made with the consent, in particular, of such States.

ARTICLE 3

Subject to the provisions contained in Articles 5 and 17, each of the Contracting States shall accord free exercise of navigation to the vessels flying the flag of any one of the other Contracting States on those parts of navigable waterways specified above which may be situated under its sovereignty or authority.

ARTICLE 4

In the exercise of navigation referred to above, the nationals, property and flags of all Contracting States shall be treated in all respects on a footing of perfect equality. No distinction shall be made between the nationals, the property and the flags of the different riparian States, including the riparian State exercising sovereignty or authority over the portion of the navigable waterway in question : similarly, no distinction shall be made between the nationals, the property and the flags of riparian and non-riparian States. It is understood, in consequence, that no exclusive right of navigation shall be accorded on such navigable waterways to companies or to private persons.

No distinction shall be made in the said exercise, by reason of the point of departure or of destination, or of the direction of the traffic.

ARTICLE 5

As an exception to the two preceding Articles, and in the absence of any Convention or obligation to the contrary :

1. A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its sovereignty or authority and

unloaded at another port also situated under its sovereignty or authority. A State which does not reserve the above-mentioned transport to its own flag may, nevertheless, refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it.

On the navigable waterways referred to in Article 2, the Act of Navigation shall only allow to riparian States the right of reserving the local transport of passengers or of goods which are of national origin or are nationalised. In every case, however, in which greater freedom of navigation may have been already established in a previous Act of Navigation, this freedom shall not be reduced.

2. When a natural system of navigable waterways of international concern which does not include waterways of the kind referred to in Article 2 separates or traverses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers and goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same State, in the course of a voyage effected without transshipment on the territory of either of the said States, involving a sea-passage or passage over a navigable waterway of international concern which does not belong to the said system.

ARTICLE 6

Each of the Contracting States maintains its existing right, on the navigable waterways or parts of navigable waterways referred to in Article 1 and situated under its sovereignty or authority, to enact the stipulations and to take the measures necessary for policing the territory and for applying the laws and regulations relating to customs, public health, precautions against the diseases of animals and plants, emigration or immigration, and to the import or export of prohibited goods, it being understood that such stipulations and measures must be reasonable, must be applied on a footing of absolute equality between the nationals, property and flags of any one of the Contracting States, including the State which is their author, and must not without good reason impede the free exercise of navigation.

ARTICLE 7

No dues of any kind may be levied anywhere on the course or at the mouth of a navigable waterway of international concern, other than dues in the nature of payment for services rendered and intended solely to cover in an equitable manner the expenses of maintaining and improving the navigability of the waterway and its approaches, or to meet expenditure incurred in the interest of navigation. These dues shall be fixed in accordance with such expenses, and the tariff of dues shall be posted in the ports. These dues shall be levied in such a manner as to render unnecessary a detailed examination of the cargo, except in cases of suspected fraud or infringement of regulations, and so as to facilitate international traffic as much as possible, both as regards their rates and the method of their application.

ARTICLE 8

The transit of vessels and of passengers and goods on navigable waterways of international concern shall, so far as customs formalities are concerned, be governed by the conditions laid down in the Statute of Barcelona on Freedom of Transit. Whenever transit takes place without transshipment the following additional provisions shall be applicable :

(a) When both banks of a waterway of international concern are within one and the same State, the customs formalities imposed on goods in transit after they have been declared and subjected to a summary inspection shall be limited to placing them under seal or padlock, or in the custody of customs officers.

(b) When a navigable waterway of international concern forms the frontier between two States, vessels, passengers and goods in transit shall while "en route" be exempt from any customs formality, except in cases in which there are valid reasons of a practical character for carrying out customs formalities at a place on the part of the river which forms the frontier, and this can be done without interfering with navigation facilities.

The transit of vessels and passengers, as well as the transit of goods without transshipment, on navigable waterways of international concern, must not give rise to the levying of any duties whatsoever, whether prohibited by the Statute of Barcelona on Freedom of Transit or authorised by Article 3 of that Statute. It is nevertheless understood that vessels in transit may be made responsible for the board and lodging of any customs officers who are strictly required for supervision.

ARTICLE 9

Subject to the provisions of Articles 5 and 17, the nationals, property and flags of all the Contracting States shall, in all ports situated on a navigable waterway of international concern, enjoy, in all that concerns the use of the port, including port dues and charges, a treatment equal to that accorded to the nationals, property and flag of the riparian State under whose sovereignty or authority the port is situated. It is understood that the property to which the present paragraph relates is property originating in, coming from or destined for, one or other of the Contracting States.

The equipment of ports situated on a navigable waterway of international concern, and the facilities afforded in these ports to navigation, must not be withheld from public use to an extent beyond what is reasonable and fully compatible with the free exercise of navigation.

In the application of customs or other analogous duties, local octroi or consumption duties, or incidental charges, levied on the occasion of the importation or exportation of goods through the aforesaid ports, no difference shall be made by reason of the flag of the vessel on which the transport has been or is to be accomplished, whether this flag be the national flag or that of any of the Contracting States.

The State under whose sovereignty or authority a port is situated may withdraw the benefits of the preceding paragraph from any vessel if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

In the absence of special circumstances justifying an exception on the ground of economic necessities, the customs duties must not be higher than those levied on the other customs frontiers of the State interested, on goods of the same kind, source and destination. All facilities accorded by the Contracting States to the importation or exportation of goods by other land or water routes, or in other ports, shall be equally accorded to importation or exportation under the same conditions over the navigable waterway and through the ports referred to above.

ARTICLE 10.

1. Each riparian State is bound, on the one hand, to refrain from all measures likely to prejudice the navigability of the waterway, or to reduce the facilities for navigation, and, on the other hand, to take as rapidly as possible all necessary steps for removing any obstacles and dangers which may occur to navigation.

2. If such navigation necessitates regular upkeep of the waterway, each of the riparian States is bound as towards the others to take such steps and to execute such works on its territory as are necessary for the purpose as quickly as possible, taking account at all times of the conditions of navigation, as well as of the economic state of the regions served by the navigable waterway.

In the absence of an agreement to the contrary, any riparian State will have the right, on valid reason being shown, to demand from the other riparians a reasonable contribution towards the cost of upkeep.

3. In the absence of legitimate grounds for opposition by one of the riparian States, including the State territorially interested, based either on the actual conditions of navigability in its territory, or on other interests such as, *inter alia*, the maintenance of the normal water-conditions, requirements for irrigation, the use of water-power, or the necessity for constructing other and more advantageous ways of communication, a riparian State may not refuse to carry out works necessary for the improvement of navigability which are asked for by another riparian State, if the latter State offers to pay the cost of the works and a fair share of the additional cost of upkeep. It is understood, however, that such works cannot be undertaken so long as the State on the territory of which they are to be carried out objects on the ground of vital interests.

4. In the absence of any agreement to the contrary, a State which is obliged to carry out works of upkeep is entitled to free itself from the obligation, if, with the consent of all the co-riparian States, one or more of them agree to carry out the works instead of it; as regards works for improvement, a State which is obliged to carry them out shall be freed from the obligation, if it authorises the State which made the request, to carry them out instead of it. The carrying out of works by States other than the State territorially interested, or the sharing by such States in the cost of works, shall be so arranged as not to prejudice the rights of the State territorially interested as regards the supervision and administrative control over the works, or its sovereignty and authority over the navigable waterway.

5. On the waterways referred to in Article 2, the provisions of the present Article are to be applied subject to the terms of the Treaties, Conventions, or Navigation Acts which determine the powers and responsibilities of the International Commission in respect of works.

Subject to any special provisions in the said Treaties, Conventions, or Navigation Acts, which exist or may be concluded :

(a) Decisions in regard to works will be made by the Commission.

(b) The settlement, under the conditions laid down in Article 22 below, of any dispute which may arise as a result of these decisions, may always be demanded on the grounds that these decisions are *ultra vires*, or that they infringe international conventions governing navigable waterways. A request for a settlement under the aforesaid conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decisions of this Commission shall be in conformity with the provisions of the present Article.

6. Notwithstanding the provisions of paragraph 1 of this Article, a riparian State may, in the absence of any agreement to the contrary, close a waterway wholly or in part to navigation, with the consent of all the riparian States or of all the States represented on the International Commission in the case of navigable waterways referred to in Article 2.

As an exceptional case one of the riparian States of a navigable waterway of international concern not referred to in Article 2 may close the waterway to navigation, if the navigation on it is of very small importance, and if the State in question can justify its action on the ground of an economic interest clearly greater than that of navigation. In this case the closing to navigation may only take place after a year's notice and subject to an appeal on the part of any other riparian State under the conditions laid down in Article 22. If necessary, the judgment shall prescribe the conditions under which the closing to navigation may be carried into effect.

7. Should access to the sea be afforded by a navigable waterway of international concern through several branches, all of which are situated in the territory of one and the same State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply only to the principal branches deemed necessary for providing free access to the sea.

ARTICLE 11.

If on a waterway of international concern one or more of the riparian States are not parties to this Statute, the financial obligations undertaken by each of the

Contracting States in pursuance of Article 10 shall not exceed those to which they would have been subject if all the riparian States had been Parties.

ARTICLE 12.

In the absence of contrary stipulations contained in a special agreement or treaty, for example existing Conventions concerning customs and police measures and sanitary precautions, the administration of navigable waterways of international concern is exercised by each of the riparian States under whose sovereignty or authority the navigable waterway is situated. Each of such riparian States has, *inter alia*, the power and duty of publishing regulations for the navigation of such waterway and of seeing to their execution. These regulations must be framed and applied in such a way as to facilitate the free exercise of navigation under the conditions laid down in this Statute.

The rules of procedure dealing with such matters as ascertaining, prosecuting and punishing navigation offences must be such as to promote as speedy a settlement as possible.

Nevertheless, the Contracting States recognise that it is highly desirable that the riparian States should come to an understanding with regard to the administration of the navigable waterway and, in particular, with regard to the adoption of navigation regulations of as uniform a character throughout the whole course of such navigable waterway as the diversity of local circumstances permits.

Public services of towage or other means of haulage may be established in the form of monopolies for the purpose of facilitating the exercise of navigation, subject to the unanimous agreement of the riparian States or the States represented on the International Commission in the case of navigable waterways referred to in Article 2.

ARTICLE 13.

Treaties, conventions or agreements in force relating to navigable waterways, concluded by the Contracting States before the coming into force of this Statute, are not, as a consequence of its coming into force, abrogated so far as concerns the States signatories to those treaties.

Nevertheless, the Contracting States undertake not to apply among themselves any provisions of such treaties, conventions or agreements which may conflict with the rules of the present Statute.

ARTICLE 14.

If any of the special agreements or treaties referred to in Article 12 has entrusted or shall hereafter entrust certain functions to an international Commission which includes representatives of States other than the riparian States, it shall be the duty of such Commission, subject to the provisions of Article 10, to have exclusive regard to the interests of navigation, and it shall be deemed to be one of the organisations referred to in Article 24 of the Covenant of the League of Nations. Consequently, it will exchange all useful information directly with the League and its organisations, and will submit an annual report to the League.

The powers and duties of the Commissions referred to in the preceding paragraph shall be laid down in the Act of Navigation of each navigable waterway and shall at least include the following :

- (a) the Commission shall be entitled to draw up such navigation regulations as it thinks necessary itself to draw up, and all other navigation regulations shall be communicated to it;
- (b) it shall indicate to the riparian States the action advisable for the upkeep of works and the maintenance of navigability;
- (c) it shall be furnished by each of the riparian States with official information as to all schemes for the improvement of the waterway;

(d) it shall be entitled, in cases in which the Act of Navigation does not include a special regulation with regard to the levying of dues, to approve of the levying of such dues and charges in accordance with the provisions of Article 7 of this Statute.

ARTICLE 15.

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 16.

This Statute does not impose upon a Contracting State any obligation conflicting with its rights and duties as a Member of the League of Nations.

ARTICLE 17.

In the absence of any agreement to the contrary to which the State territorially interested is or may be a party, this Statute has no reference to the navigation of vessels of war or of vessels performing police or administrative functions, or, in general, exercising any kind of public authority.

ARTICLE 18.

Each of the Contracting States undertakes not to grant either by agreement or in any other way, to a non-Contracting State, treatment with regard to navigation over a navigable waterway of international concern, which, as between Contracting States, would be contrary to the provisions of this Statute.

ARTICLE 19.

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may, in exceptional cases and for a period as short as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of the freedom of navigation, and especially communication between the riparian States and the sea, must be maintained to the utmost possible extent.

ARTICLE 20.

This Statute does not entail in any way the withdrawal of existing greater facilities granted to the free exercise of navigation on any navigable waterway of international concern, under conditions consistent with the principle of equality laid down in this Statute, as regards the nationals, the goods and the flags of all the Contracting States; nor does it entail the prohibition of such grant of greater facilities in the future.

ARTICLE 21.

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of navigation must be observed as far as possible.

ARTICLE 22.

Without prejudice to the provisions of paragraph 5 of Article 10, any dispute between States as to the interpretation or application of this Statute which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for free navigation which existed before the act or occurrence which gave rise to the dispute.

ARTICLE 23.

A navigable waterway shall not be considered as of international concern on the sole ground that it traverses or delimits zones or enclaves, the extent and population of which are small as compared with those of the territories which it traverses, and which form detached portions or establishments belonging to a State other than that to which the said river belongs, with this exception, throughout its navigable course.

ARTICLE 24.

This Statute shall not be applicable to a navigable waterway of international concern which has only two riparian States, and which separates, for a considerable distance, a Contracting State from a non-Contracting State whose Government is not recognised by the former at the time of the signing of this Statute, until an agreement has been concluded between them establishing, for the waterway in question, an administrative and customs regime which affords suitable safeguards to the Contracting State.

ARTICLE 25.

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part, or placed under the protection, of the same sovereign State, whether or not these territories are individually Members of the League of Nations.

SECTION VIII

ADDITIONAL PROTOCOL TO THE CONVENTION ON THE REGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN

1. The States signatories of the Convention on the Regime of Navigable Waterways of International Concern, signed at Barcelona on April 20th, 1921, whose duly authorised representatives have affixed their signatures to the present Protocol, hereby declare that, in addition to the Freedom of Communications which they have conceded by virtue of the Convention on Navigable Waterways considered as of international concern, they further concede, on condition of reciprocity, without prejudice to their rights of sovereignty, and in time of peace,

(a) on all navigable waterways,

(b) on all naturally navigable waterways,

which are placed under their sovereignty or authority, and which, not being considered as of international concern, are accessible to ordinary commercial navigation to and from the sea, and also in all the ports situated on these waterways, perfect equality of treatment for the flags of any State signatory of this Protocol as regards the transport of imports and exports without transhipment.

At the time of signing, the signatory States must declare whether they accept the obligation to the full extent indicated under paragraph (a) above, or only to the more limited extent defined by paragraph (b).

It is understood that States which have accepted paragraph (a) are not bound as regards those which have accepted paragraph (b), except under the conditions resulting from the latter paragraph.

It is also understood that those States which possess a large number of ports (situated on navigable waterways) which have hitherto remained closed to international commerce, may, at the time of the signing of the present Protocol, exclude from its application one or more of the navigable waterways referred to above.

The signatory States may declare that their acceptance of the present Protocol does not include any or all of the colonies, overseas possessions or protectorates under their sovereignty or authority, and they may subsequently adhere separately on behalf of any colony, overseas possession or protectorate so excluded in their declaration. They may also denounce the Protocol separately in accordance with its provisions, in respect of any colony, overseas possession or protectorate under their sovereignty or authority.

The present Protocol shall be ratified. Each Power shall send its ratification to the Secretary-General of the League of Nations, who shall cause notice of such ratification to be given to all the other signatory Powers; these ratifications shall be deposited in the archives of the Secretariat of the League of Nations.

The present Protocol shall remain open for the signature or adherence of the States which have signed the above-mentioned Convention or have given their adherence to it.

It shall come into force after the Secretary-General of the League of Nations has received the ratification of two States; provided, however, that the said Convention has come into force by that time.

It may be denounced at any time after the expiration of a period of two years dating from the time of the reception by the Secretary-General of the League of Nations of the ratification of the denouncing State. The denunciation shall not take effect until one year after it has been received by the Secretary-General of the League of Nations. A denunciation of the Convention on the Regime of Navigable Waterways of International Concern shall be considered as including a denunciation of the present Protocol.

Done at Barcelona, the twentieth day of April, nineteen hundred and twenty-one, in a single copy, of which the French and English texts shall be authentic.

(Here follow the signatures of the Delegates.)

SECTION IX

DRAFT CONVENTION ON THE RIGHT TO A FLAG OF STATES NOT POSSESSING A SEA-COAST

(Annex III a of the *Green Book*.)

The High Contracting Parties agree to recognise the flag flown by the vessels of any Contracting Party having no sea-coast, which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels (1).

(1) See the commentary on this Draft Convention, p. 421, under Article 3.

SECTION X

DECLARATION RECOGNISING THE RIGHT TO A FLAG OF STATES HAVING NO SEA-COAST

The undersigned, duly authorised for the purpose, declare that the States which they represent recognise the flag flown by the vessels of any State having no sea-coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

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Estonia	M. C.R. Pusta
Finland	M. Rolf Thesleff
France	M. le Trocquer, minister for Public Works, M. Sibille, deputy delegate President of the Public Works Committee of the Chamber of Deputies.
Georgia	M. Michel Soumbatoff
Great-Britain	Sir Llewellyn Smith, Economic Adviser to the Bri- tish Cabinet.
Greece	M. Pierre Scassis, Greek Minister at Madrid.
Guatemala	Dr. Norberto Galvaz
Haiti	M. Soler
Hungary	M. E. de Walther
Honduras	M. N. Galvaz
India	Sir L.G. Hershaw. KCSI, CIL.
Italy	Sig. Poano, Minister for Public Works Sig. Bagnami, deputy member, Deputy, former Under Secretary of State for Public Works
Japan	M. Matsuda
Latvia	M. G. Albat

Lithuania	M. Galvanovski
Luxembourg	M. Lefort
Norway	M. Skybak
Netherlands	Dr. C. Lely, former Minister for Public Works J. B. Van Raaij, deputy delegate M. Kröller
Peru	Admiral Garzon
Persia	Mirza Husein Khan Alai
Poland	M. Ladislas Skrzynski
Portugal	M. d'Andrade, former Minister for Foreign Affairs
Roumania	General Valéano, Minister for Transport
Serb-Croat-Slovene State	M. Mentschile Nintchitch, former Minister
Sweden	M. Heerman
Switzerland	M. Carlin, Swiss Minister to the Netherlands.
Czecho-Slovakia	M. Mueller M. Tankas.
Uruguay	M. Benjamin Fernandez Y Andina
Venezuela	M. Sima Blasa Suarez.

The following have accepted but have not communicated the names of their delegates.-

Bolivia
Colombia
Paraguay
Germany.

[Communiqué au Conseil,
aux Membres de la Société
et aux Délégués à l'Assemblée.]

A. 45. 1921. VIII.

[C. 266. 1921. VIII.]
[C. 310. 1921. VIII.]

Genève,

le 5 septembre 1921.

SOCIÉTÉ DES NATIONS

L'ORGANISATION DES COMMUNICATIONS ET DU TRANSIT

ENTRE LA PREMIÈRE ET LA DEUXIÈME ASSEMBLÉE

1. Rapport général de la Commission consultative et technique des Communications et du Transit, adopté par le Conseil le 2 septembre 1921.
 2. Rapport de M. Quiñones de León adopté par le Conseil le 2 septembre 1921 sur la transmission du précédent rapport à l'Assemblée.
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LEAGUE OF NATIONS

THE ORGANISATION FOR COMMUNICATIONS AND TRANSIT

BETWEEN THE FIRST AND THE SECOND ASSEMBLY

1. General Report of the Advisory and Technical Committee for Communications and Transit adopted by the Council on September 2nd, 1921.
2. Report of M. Quiñones de León, adopted by the Council on September 2nd, 1921, on the transmission to the Assembly of the preceding report.

**COMMISSION CONSULTATIVE ET TECHNIQUE DES
COMMUNICATIONS ET DU TRANSIT.**

Note du Secrétaire général :

Le Rapport suivant de la Commission consultative et technique des Communications et du Transit, ainsi que le Rapport de M. Quiñones de León, adopté par le Conseil le 2 septembre 1921, sont soumis, pour examen, à l'Assemblée.

**I. Rapport sur les travaux de l'organisation des Communications et du Transit
entre la première et la deuxième session de l'Assemblée.**

Sur la proposition du Conseil, l'Assemblée a adopté, le 9 décembre dernier, une résolution convoquant une première Conférence générale des Communications et du Transit destinée à examiner de quelles manières la Société des Nations pourrait s'acquitter des missions qui lui sont confiées par la partie de l'article 23 *e*) du Pacte touchant les communications et le transit, ainsi que par divers articles de même nature des Traités de Paix. Cette Conférence devait, en outre, organiser, sur les bases établies par la Résolution même de l'Assemblée, une Commission consultative et technique des Communications.

Ainsi était prévue l'institution, dans la Société des Nations, d'une Organisation définitive des Communications et du Transit destinée à prendre la place de l'organisme provisoire créé, avant la réunion de l'Assemblée, par le Conseil.

Cette Organisation devait fonctionner selon les principes fixés par l'Assemblée dans sa résolution du 8 décembre. Elle ne devait pas être une organisation permanente à la manière de l'Organisation internationale du Travail, mais seulement se composer d'une série de Conférences générales convoquées par le Conseil dans la stricte mesure des besoins, et d'une Commission simplement consultative, issue des Conférences et assistant de ses propositions et de ses avis, dans l'intervalle des Conférences, les Membres de la Société des Nations, l'Assemblée et le Conseil.

La première Conférence générale des Communications et du Transit, réunie à Barcelone du 10 mars au 20 avril 1921, a rempli la tâche qui lui était assignée par l'Assemblée.

L'Organisation des Communications et du Transit est constituée. La Commission consultative et technique s'est réunie. Elle a estimé devoir aussitôt rendre compte au Conseil, avant la deuxième session de l'Assemblée, du travail accompli dès à présent, ainsi que des mesures que, comme résultat des délibérations de la Conférence de Barcelone et de ses propres délibérations, elle demande à l'Assemblée de prendre.

I

RÉUNION DE LA CONFÉRENCE DE BARCELONE

Le rapport au Conseil de S. E. M. Quiñones de León, représentant du Conseil à l'ouverture de la Conférence, et celui de S. E. M. Hanotaux, Président de la Conférence, rapports distribués à tous les Membres de la Société, ont exposé les résultats d'ensemble de la Conférence de Barcelone et la physionomie des débats.

Le but de la Conférence était, notamment, d'assurer la garantie et le maintien de la liberté des communications et du transit (article 23 du Pacte). Il s'agissait ainsi de créer, dans l'intérêt du commerce international qui a un absolu besoin de la stabilité et de la continuité de ses grands courants de trafic, un régime de garanties juridiques lui permettant d'échapper aux rivalités politiques et aux représailles économiques. Par là, selon les intentions du Pacte, on contribuerait non seulement

THE ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT.

Note by the Secretary-General:

The following Report of the Advisory and Technical Committee for Communications and Transit, together with the Report of M. Quiñones de León, adopted by the Council on September 2nd, 1921, is transmitted for the consideration of the Assembly.

I. Report on the Work Done by the Organisation for Communications and Transit between the first and second Session of the Assembly.

At the suggestion of the Council, the Assembly passed a Resolution, on December 9th last, convening the first General Conference on Communications and Transit, to consider how the League of Nations could discharge the duties entrusted to it by the part of Article 23 (e) of the Covenant relating to Communications and Transit, and also by various Articles of the same kind in the Peace Treaties. This Conference also had the task of organising an Advisory and Technical Committee for Communications, upon a basis laid down by the Assembly's Resolution.

Provision was, therefore, made for the formation, within the League of Nations, of a definite Organisation for Communications and Transit, to take the place of the Provisional Organisation which had been created by the Council before the meeting of the Assembly.

This Organisation was to carry out its duties in conformity with the principles laid down by the Assembly in its Resolution of December 8th. It was not meant to be a Permanent Organisation like the International Labour Office, but was to exist merely in the form of a series of General Conferences to be convened by the Council in strict accordance with requirements, and of a purely advisory Committee created by the Conferences, which would assist the Members of the League of Nations, the Assembly and the Council with proposals and advice in the intervals between the Conferences.

The first General Conference on Communications and Transit, which met at Barcelona from March 10th to April 20th, 1921, carried out the work entrusted to it by the Assembly.

The Organisation for Communications and Transit has been formed. The Advisory and Technical Committee has met, and has thought it right at once to submit a report to the Council, before the second session of the Assembly, on the work so far accomplished, and the measures which, as a result of its own discussions and those of the Barcelona Conference, it will ask the Assembly to adopt.

I.

THE MEETING OF THE BARCELONA CONFERENCE.

The Report of H. E. M. Quiñones de León, who represented the Council at the opening of the Conference, and that of H. E. M. Hanotaux, the President of the Conference, which have been distributed to all the Members of the League, have presented the general results of the Barcelona Conference, and the trend of its discussions.

The object of the Conference was primarily to guarantee and to provide for the maintenance of Freedom of Communications and Transit (Article 23 of the Covenant). It was, therefore, necessary to create, in the interests of international commerce, which imperatively requires stability and continuity in the main currents of traffic, a regime of legal guarantees which would free it from the effects of political rivalries and economic reprisals. This would be a step in conformity with the inten-

à augmenter le rendement économique du monde et à diminuer le prix de la vie en allégeant ou supprimant les péages perçus sur le prix des transports pour des raisons autres que des raisons économiques et en réalisant un début d'unification des transports internationaux, mais encore on parviendrait, dans une certaine mesure, en donnant des garanties précises aux Etats qui ont un besoin impérieux de trouver chez les autres Etats des sûretés précises quant à la régularité des transports d'importation et d'exportation indispensables à leur propre vie, à rendre plus rares les froissements internationaux et à restreindre les risques de guerre.

La Conférence de Barcelone n'a certes pas pu, en six semaines de délibérations, définitivement réaliser toute cette œuvre et arrêter des conventions internationales transformant d'un coup les conditions de transports dans le monde. Sachant qu'elle n'était que la première d'une série de Conférences devant se tenir à certains intervalles de temps, elle ne s'est aucunement proposé de terminer en une fois l'œuvre d'organisation des communications internationales, mais seulement d'attaquer immédiatement les problèmes prévus déjà par le traité de paix et de poser pour les autres les bases d'un développement futur.

Deux grandes questions ont pu faire, dès à présent, l'objet de conventions internationales élaborées et conclues à la Conférence de Barcelone: la question des transports en transit et la question des transports sur les voies navigables d'intérêt international.

QUESTION DES TRANSPORTS EN TRANSIT.

On sait qu'on appelle « transports en transit » les transports qui traversent un Etat, mais dont le point de départ et le point de destination sont en dehors de cet Etat. De tels transports ont particulièrement besoin de garanties internationales. En effet, dans le cas des transports à l'exportation et à l'importation, un Etat qui gênerait ou supprimerait la liberté d'exercice de ces transports pourrait porter atteinte indirectement au relèvement économique du monde, et par là à la collectivité des Etats, mais, directement, il ne lèserait que les Etats exportateurs dont il refuserait ou gênerait les transports à l'importation chez lui, ou les Etats importateurs qui auraient besoin, par exemple, des matières premières dont il est lui-même détenteur et dont il ne permettrait pas l'exportation. Pour les transports en transit, au contraire, toute interruption ou toute gêne lèserait des Etats tiers, à la fois les Etats exportateurs et les Etats importateurs des produits dont le trafic est interrompu. Une telle interruption provoquerait inévitablement des représailles et des contre-coups dont l'effet serait impossible à limiter.

La Convention internationale de Barcelone sur la Liberté du Transit a donc pour objet d'empêcher cette interruption et cette gêne. Pour cela, elle stipule, mais bien entendu sous réserve des restrictions légitimes touchant à la police, à la sauvegarde nationale, aux transports en temps de guerre, etc., ainsi que sous réserve des nécessités d'adaptation à la situation juridique existante et aux conditions locales ou régionales des diverses parties du monde, la liberté complète du transit et l'égalité complète des conditions de transit. L'égalité dans ce domaine, comme dans bien d'autres, n'est que la condition même de la liberté. Sans elle, en fait, le courant de trafic qui aurait à supporter des conditions onéreuses serait automatiquement arrêté par suite du simple jeu de la concurrence commerciale. Cette liberté et cette égalité étant admises, au contraire, la concurrence commerciale internationale pourrait s'exercer selon son libre jeu, les transports en transit jouissant, au bénéfice de tous, d'une sorte d'immunité.

Les débats relatifs à la Convention sur la Liberté du Transit ont montré un accord unanime de tous les gouvernements représentés à la Conférence ⁽¹⁾ pour l'adoption de ces principes. Les seules divergences, facilement réglées, ont porté sur la mesure dans laquelle devaient être admises les réserves ci-dessus énoncées, c'est-à-dire le point où la liberté du transit cesserait d'être un droit international légitime et porterait atteinte à la souveraineté des Etats chargés d'assurer ce transit.

¹ Gouvernements représentés à la Conférence:

a) Membres de la Société des Nations: Albanie, Autriche, Belgique, Bolivie, Brésil, Bulgarie, Chili, Chine, Colombie, Costa-Rica, Cuba, Danemark, Empire britannique, Espagne, Finlande, France, Grèce, Guatemala, Haïti, Honduras, Indes, Italie, Japon, Luxembourg, Norvège, Panama, Paraguay, Pays-Bas, Perse, Pologne, Portugal, Roumanie, Etat serbe-croate-slovène, Suède, Suisse, Tchéco-Slovaquie, Uruguay, Venezuela; Nouvelle-Zélande représentée pour la signature.

b) Etats non Membres de la Société des Nations, mais admis dans les organisations techniques: Esthonie, Lettonie, Lithuanie.

c) Etats invités à titre consultatif: Allemagne, Hongrie.

tions of the Covenant, towards increasing the economic output of the world, and diminishing the cost of living, by the reduction or abolition of the dues levied on the cost of transport for other than economic reasons, and by the initiation of measures for the unification of international transport. Further, by giving specific guarantees to the States urgently requiring definite security in other States for the regular import and export traffic essential to their existence, some progress would be made towards rendering international friction less frequent and diminishing the risk of war.

The Barcelona Conference was, of course, not able, in six weeks of discussion, to carry out the whole of this programme, or to draw up International Conventions which, at one stroke, would transform the conditions of world transport. As it knew that it was only the first of a series of Conferences to be held at certain intervals, it did not attempt to complete in one session the whole work of organising international communications, but confined itself to dealing at once with those problems already contemplated by the Peace Treaty and, with regard to the others, laying a foundation for future development.

It has, however, already been possible to deal with two great questions by means of International Conventions drawn up and concluded at the Barcelona Conference: the question of transport in transit and the question of transport on navigable waterways of international concern.

THE QUESTION OF TRANSPORT IN TRANSIT.

By "transport in transit" is meant transport which crosses a State; its points of departure and destination being outside that State. Transport of this kind is specially in need of international guarantees. In the case of the transport of exports and imports, a State which obstructs or prevents free movement of such transport may indirectly cause serious prejudice to the economic reconstruction of the world. In this way it injures every State, but it directly injures only, either those exporting States the transport of whose goods it prevents or obstructs in the course of importation, or those importing States which may, for instance, be in need of raw materials, which the obstructing State possesses, and the export of which it prohibits. As regards transport in transit, on the other hand, any interruption or obstruction injures third parties, both the States which export and those which import the products, the passage of which has been prevented. Such an interruption of traffic inevitably causes reprisals and counter-effects, the results of which cannot be limited.

The International Convention of Barcelona on Freedom of Transit is, therefore, designed to prevent interruption or obstruction of this kind. With this object it provides — making due allowance, of course, for legitimate restrictions as regards police, national security, transport in war-time, etc., and also for the need of adapting its measures to the existing legal position, and to the local or regional conditions in various parts of the world — for complete freedom of transit and complete equality of transit conditions. In this sphere, as in many others, liberty is indeed conditional upon equality. Without this equality, any traffic route upon which serious burdens were imposed would be automatically stopped by the natural effects of commercial competition. On the other hand, if liberty and equality are admitted, international commercial competition may take its free course, and transport in transit will enjoy an immunity which will benefit all the world.

The discussions on the Convention on Freedom of Transit revealed a unanimous agreement on the part of all the Governments¹ represented at the Conference in favour of the adoption of these principles. The only differences of opinion (which were easily reconciled) related to the extent to which the reservations referred to above could be recognised, that is, to the point where freedom of transport might cease to become a legitimate international right, and might prejudice the sovereignty of the States by which the transit was to be effected.

¹ Governments represented at the Conference :

(a) Members of the League of Nations: Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Czecho-Slovakia, Denmark, British Empire, Finland, France, Greece, Guatemala, Haiti, Honduras, India, Italy, Japan, Luxemburg, Netherlands, Norway, Panama, Paraguay, Persia, Poland, Portugal, Roumania, Serb-Croat-Slovene State, Spain, Sweden, Switzerland, Uruguay, Venezuela; New Zealand (the last-named signed by proxy).

(b) States not Members of the League of Nations but admitted to the Technical Organisations : Esthonia, Latvia, Lithuania.

(c) States invited in an advisory capacity : Germany and Hungary.

QUESTION DES TRANSPORTS SUR LES VOIES NAVIGABLES D'INTÉRÊT INTERNATIONAL.

Les mêmes principes de liberté et d'égalité qui, pour l'ensemble des transports par voies ferrées et par voies d'eau, sont appliqués seulement au cas des transports en transit, sont au contraire, dans le cas spécial des transports sur voies d'eau d'intérêt international, appliqués à toutes les catégories de transports, y compris les transports d'importation et d'exportation et les transports intérieurs. La Convention de Barcelone, relative au Régime international des Voies navigables, réglemente précisément la navigation sur ces voies d'eau.

On appelle voies d'eau d'intérêt international les voies d'eau accessibles à la navigation commerciale ordinaire et donnant accès à la mer à plus d'un Etat. De telles voies d'eau ont, depuis longtemps, fait l'objet d'accords internationaux généraux ou particuliers. Il y a plus d'un siècle, la Révolution française avait déjà proclamé la liberté complète de navigation et l'égalité des pavillons sur ces voies d'eau, qui étaient alors appelées voies d'eau internationales. Le Congrès de Vienne avait déjà tenté d'élaborer les mesures d'application de ces principes qui ont, en fait, inspiré la réglementation de la navigation à travers le XIX^{me} siècle sur les grandes voies d'eau internationales européennes, comme le Rhin et le Danube, ainsi que sur les grandes voies d'eau africaines. La nécessité de la coopération internationale pour l'utilisation rationnelle de ces grandes voies de trafic est évidente. Un Etat traversé par elles ne pourrait les monopoliser à son profit sans se porter tort à lui-même par l'usage que les autres Etats riverains feraient de ce même monopole. Les Etats situés à l'amont des grands fleuves internationaux souffriraient particulièrement de ce manque de liberté, surtout les Etats privés d'accès à la mer. Pour eux, la liberté sur les voies d'eau d'intérêt international n'est qu'une autre expression du droit d'accès libre à la mer.

La Conférence de Barcelone a réussi à envisager l'application universelle de ces principes. Leur élaboration dans les détails offrait à ce point de vue des difficultés très particulières. L'évolution du droit international fluvial en Amérique du Sud, notamment, n'a pas suivi un cours exactement semblable à celui du droit fluvial européen. L'idée même d'une réglementation universelle pourrait subir là un grave échec. En fait, au contraire, après de longues discussions où sont particulièrement intervenus les représentants les plus qualifiés de l'Amérique du Sud en ce domaine, la conciliation supérieure des thèses d'abord opposées a été obtenue et, par la fusion de droits d'origines diverses, une transaction a été acquise, gage de succès pour le développement à venir.

La Conférence de Barcelone a estimé que les principes de la Convention sur le Transit, comme ceux de la Convention sur les Voies navigables d'intérêt international, ne fixaient pas en temps de guerre les droits et les devoirs des belligérants et des neutres.

Elle a cependant stipulé que ces mêmes principes subsisteraient en temps de guerre dans la mesure compatible avec ces droits et ces devoirs. De plus, elle a adopté le vœu que la Société des Nations invite ses Membres à se réunir en vue de l'élaboration de nouvelles Conventions destinées à régler ces mêmes droits et devoirs en matière de transit. Ce vœu a été transmis au Conseil.

La Conférence de Barcelone aurait pu s'en tenir là à la rigueur et se borner, si elle s'était restreinte à son ordre du jour tel qu'il était d'abord prévu, à se préoccuper seulement des voies d'eau d'intérêt international, sans toucher aucunement le régime général des transports sur les autres voies d'eau. Mais un certain nombre d'Etats s'étant montrés, dès à présent, disposés à accepter, sous réserve de réciprocité, certaines obligations pour toutes leurs voies d'eau, et non pas seulement pour les voies d'eau d'intérêt international, un protocole additionnel a été élaboré, auquel certaines adhésions sont déjà acquises, et qui permettra, peu à peu, par un mécanisme très simple, d'augmenter, au fur et à mesure que les Etats le désireront, la liberté des communications fluviales dans le monde.

Enfin, dans le même ordre d'idées que l'égalité des pavillons prévue dans la Convention sur les Voies navigables, il y a lieu de signaler la déclaration adoptée à Barcelone, portant reconnaissance du droit au pavillon maritime des Etats privés d'accès à la mer.

Ce serait méconnaître absolument le caractère des Conventions de Barcelone que de se borner à résumer leurs principes et, si l'on peut dire, leur contenu. La plus grande nouveauté peut-être de ces Conventions, celle qui n'aurait pu être acquise qu'avec la plus grande difficulté si elles n'avaient pas été des conventions de la Société des Nations, c'est qu'il y a en elles-mêmes, et indépendamment de la procé-

THE QUESTION OF TRANSPORT ON NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN.

The same principles of liberty and equality which, as regards traffic both by rail and by water, are generally applicable only in the case of "transport in transit," are, on the other hand, in the special case of transport on waterways of international concern, applied to every class of transport, including imports and exports and internal transport. The Barcelona Convention dealing with the international régime of navigable waterways is specially intended to regulate navigation on these waterways.

By "waterways of international concern" is meant waterways which are accessible to ordinary commercial navigation, and which provide more than one State with access to the sea. Waterways of this kind have, for a long time past, been subjects for general or particular international agreements. More than a century ago, the French Revolution had already proclaimed complete liberty of navigation and equality for all flags on these waterways, which were then described as international waterways. The Congress of Vienna had already attempted to work out measures to give effect to these principles, which, indeed, were the bases, during the nineteenth century, of the regulations of navigation over the great European international waterways, such as the Rhine and the Danube, and also over the great African waterways. It is evident that international co-operation is essential, if these great traffic routes are to be utilised in a rational way. No State traversed by one of these waterways could monopolise it for its own profit without doing injury to itself, since the other riparian States would make a similar use of this right of monopoly. States situated far up the course of the great international rivers would suffer particularly from this lack of liberty, especially States deprived of access to the sea, for, in their case, freedom of navigation on waterways of international concern is only another word for the right of free access to the sea.

At the Barcelona Conference, it was possible to contemplate the universal application of these principles. The working out of their details presented peculiar difficulties from this point of view. The evolution of international law with regard to rivers in South America, to cite an important instance, has not followed exactly the same course as that of European river law. This circumstance might appear a serious barrier to a universal system for the regulation of river navigation. In fact, however, after long debates, in which a prominent part was taken by the South American representatives expert in this subject, it was found possible to reconcile opinions which had, at first, been in conflict, and, by merging the rights, varying in their origin, a compromise was effected, which constitutes a happy augury for future progress.

The Barcelona Conference considered that the principles of the Convention on Transit and the Convention on Navigable Waterways of International Concern did not define the rights and duties of belligerents and neutrals in time of war.

It, nevertheless, stipulated that these same principles should apply in time of war as far as might be compatible with these rights and duties. Further, it adopted the recommendation that the League of Nations should invite its members to meet, in order to draw up new Conventions with the object of defining these rights and duties with regard to transit. This recommendation was transmitted to the Council.

The Barcelona Conference might, strictly speaking, have stopped there, limiting itself, if it had been restricted to the agenda originally prepared, to dealing with waterways of international concern, without any reference to the general control of traffic on other waterways. A certain number of States, however, having shown themselves disposed, on condition of reciprocity, to accept certain obligations in regard to all their waterways, and not only as regards waterways of international concern, an additional protocol was drawn up, to which certain adherences have already been obtained, and which, by very simple machinery, will gradually render it possible to increase liberty of river communications throughout the world to any degree that the States desire.

Finally, in connection with the question of the equality of flags provided for in the Convention on Navigable Waterways, attention may be drawn to the declaration adopted at Barcelona, recognising the right of States, having no access to the sea, to a maritime flag.

It would show complete lack of comprehension of the nature of the Barcelona Conventions to give only a summary of their principles, and of their contents. Perhaps the most original feature of these Conventions, and one which they could only have acquired with the greatest difficulty, if they had not been Conventions of the League of Nations, is that, quite apart from the procedure of revision which has been

ture parfaitement prévue de revision, des possibilités permanentes d'adaptation, de développement, de progrès. Il est dit, en effet, dans chacune de ces Conventions, en un article qui est peut-être, à certains points de vue, le plus important, et qui reproduit des dispositions adoptées par l'Assemblée pour le règlement des différends relatifs aux clauses des transports des Traités de Paix, d'abord que tous les différends relatifs à l'application et à l'interprétation de ces Conventions seront soumis à la Cour de Justice internationale, mais aussi que tous les Etats contractants s'engagent, avant de soumettre leurs différends à l'instance judiciaire, à en tenter l'arrangement amiable, en recourant à l'avis de l'organisme technique qualifié de la Société des Nations. Cet organisme, dont la Conférence de Barcelone a, sur l'invitation de l'Assemblée, prévu dans les détails la constitution, est la Commission consultative et technique des Communications et du Transit. Au fur et à mesure que ces difficultés et ces cas particuliers d'interprétation ou d'application se poseront, la Commission consultative les examinera, et cela nécessairement dans un esprit d'équité et de collaboration internationale, dans l'esprit même qui a inspiré les Conventions. Précisément parce qu'elle n'est qu'un organisme d'arrangement amiable des différends, elle pourra, au fur et à mesure et selon l'état de l'opinion internationale, proposer et faire accepter librement les solutions, qui, peu à peu, par une évolution progressive, dégageront lentement et selon les besoins, les conséquences plus ou moins lointaines du droit international nouveau dont les textes, quels qu'ils soient, ne peuvent que fixer prudemment les grandes lignes.

Grâce à la Commission, et par leur liaison intime ainsi assurée avec l'organisation d'ensemble de la Société des Nations, les Conventions apparaîtront, désormais, non comme le terme, mais comme le début d'une évolution, et la souplesse même de leurs formules deviendra, non pas un élément de confusion et de controverses, mais une source sans cesse renouvelée d'initiatives et d'adaptations pratiques.

Outre ces Conventions, la Conférence de Barcelone, qui — d'après la résolution de l'Assemblée du 9 décembre — devait déterminer si les mesures qu'elle préconiserait auraient la forme de convention, de recommandation ou de projet de résolution à soumettre à l'Assemblée ou au Conseil, a adopté une recommandation sur le Statut des Ports soumis à un Régime international et une série de recommandations sur le Régime international des Voies ferrées.

PORTS SOUMIS A UN RÉGIME INTERNATIONAL.

N'estimant pas opportun la conclusion actuelle d'une convention sur les ports, elle a été néanmoins à même, en utilisant les compétences techniques de toutes les parties du monde, d'établir un statut type des ports, fondé sur les mêmes principes qui ont été appliqués aux Conventions sur le Transit et sur les Voies navigables, et utilisable dans les cas où un tel régime serait jugé opportun par les Etats. Certains Etats ont déjà paru manifester l'intention de l'appliquer volontairement à tels de leurs ports. Dans d'autres cas, il pourra être utilisé à l'occasion de traités internationaux ayant à prévoir le régime des ports placés dans des situations politiques ou économiques particulières.

RÉGIME INTERNATIONAL DES VOIES FERRÉES.

Les recommandations sur le Régime international des Voies ferrées devaient former originellement une convention. La Convention sur le Régime international des Voies ferrées est, en effet, la seule des conventions figurant à l'ordre du jour de la Conférence de Barcelone qui n'ait pas été adoptée dans sa forme originale. Mais si cette transformation d'une convention obligatoire en une simple série de recommandations a été apportée au plan primitif, ce n'est aucunement en raison d'une sorte de méfiance des divers Etats devant une Convention internationale sur le Régime des transports par Voies ferrées; c'est, au contraire, ainsi qu'il a été exposé dans le rapport du Président de la Conférence, parce que le texte proposé, lequel a passé intégralement dans les recommandations, n'a pas paru, à beaucoup de délégations, suffisant pour justifier la forme d'une convention qu'elles auraient désiré, au contraire, plus ample et beaucoup plus riche de contenu. Aussi la Conférence a-t-elle décidé de se borner, pour l'instant, à une série de recommandations, mais en même temps de demander formellement, dans un délai maximum de deux ans, la réunion de la deuxième Conférence générale des Communications et du Transit, qui serait chargée d'élaborer et de conclure la Convention générale sur le Régime international des Voies ferrées.

amply provided for, they contain in themselves possibilities of permanent adaptation, development and progress. In each of these Conventions, in a clause which is perhaps, from certain points of view, the most important, and which embodies provisions adopted by the Assembly for the settlement of disputes arising out of clauses in the Peace Treaties dealing with transport, it is stated that all disputes relating to the application and interpretation of the Conventions shall be submitted to the Court of International Justice, and that all the contracting States engage, before resorting to any judicial proceedings, to seek an amicable settlement by invoking the assistance of the qualified technical organisation of the League of Nations. This organisation, the constitution of which was laid down in detail by the Barcelona Conference, at the suggestion of the Assembly, is the Advisory and Technical Committee for Communications and Transit. The Advisory Committee will deal with these difficulties and special cases of interpretation or application as they arise, and in the same spirit of equity and international co-operation as animated the Conventions themselves. By the very fact that it is an organisation for the friendly settlement of disputes, it will be able, as international opinion develops, to propose and to find a ready acceptance for solutions, which will slowly and progressively evolve in accordance with actual needs, the effects more or less remote of the new international law, only the broad outlines of which can be safely fixed by any text.

Owing to the Committee, and since they are closely united to the general organisation of the League of Nations, the Conventions will henceforth appear, not as the end, but as the beginning of an evolution, and the very elasticity of their clauses will not become a source of confusion and controversy, but will make them the basis upon which constantly to initiate and adapt practical measures.

In addition to these Conventions, the Barcelona Conference, which, according to the Assembly Resolution of December 9th, was to determine whether the measures which it elaborated should take the form of conventions, recommendations or draft resolutions to be adopted by the Assembly or by the Council, adopted a recommendation relative to Ports placed under an International Régime, and a series of recommendations on the International Régime of Railways.

PORTS UNDER AN INTERNATIONAL RÉGIME.

While considering that the moment had not yet arrived for the conclusion of a Convention on the international régime of ports, the Barcelona Conference was able, by availing itself of the competent technical authorities of all parts of the world, to draw up a standard statute for ports, based on the same principles as were applied to the Conventions on Transit and Navigable Waterways, and applicable in cases where such a régime should be judged opportune by the States. Certain States appear already to have shown their intention of applying it voluntarily to certain of their ports. In other cases, it may be used in drawing up international treaties establishing a régime for ports in special political or economic situations.

INTERNATIONAL RÉGIME OF RAILWAYS.

The recommendations relating to the International Régime of Railways were originally intended to form a Convention. The Convention on the International Régime of Railways is, indeed, the only one on the agenda of the Barcelona Conference which was not adopted in its original form. If, however, this transformation of an obligatory Convention into a mere series of recommendations was introduced into the original scheme, this is in no way due to any mistrust on the part of the various States of an International Convention on the Régime of Railway Transport; it is, on the contrary, as has been shown in the President's Report, because the proposed text, which has been embodied in its entirety in the recommendations, did not appear to many of the delegations sufficient to justify the form of a Convention, which they would have wished to see more detailed and much wider in scope. The Conference, therefore, decided to confine itself, for the time being, to a series of recommendations, but at the same time formally to request the convocation of the second general Conference on Communications and Transit, within a maximum period of two years; the work of this Conference would be to draw up and conclude the general Convention on the International Régime of Railways.

RÈGLEMENT D'ORGANISATION.

Enfin, la Conférence de Barcelone a dû établir, non seulement son Règlement intérieur proprement dit, mais encore, conformément à la résolution de l'Assemblée, le Règlement d'organisation de toute Conférence générale des Communications et du Transit et de la Commission consultative et technique.

Ce Règlement se conforme rigoureusement aux principes des résolutions de l'Assemblée, et notamment à ceux fixés par la résolution du 8 décembre sur les rapports entre les organisations techniques, le Conseil et l'Assemblée.

Sur un point seulement, la Conférence, sans s'écarter de ces principes, mais croyant au contraire s'inspirer de l'esprit qui les dictait, a cru devoir innover en prenant l'initiative de prévoir la convocation possible, par le Conseil, de conférences, non plus générales mais partielles, c'est-à-dire composées de représentants d'un certain nombre seulement d'Etats qui, par leur position géographique notamment, seraient les seuls intéressés à l'examen des questions pouvant présenter un caractère nettement régional ou continental. Au cours même de ses délibérations, en effet, notamment au cours des discussions sur la définition des voies navigables d'intérêt international, sur le Régime international des Voies ferrées, sur la diversité des conditions du transit, selon les conditions géographiques ou régionales, la Conférence s'est rendu compte qu'un grand nombre de questions, dont les solutions étaient malaisées ou impossibles dans un cadre rigoureusement universel, pourraient avantageusement faire l'objet d'un règlement international, suffisamment général, sous l'égide de la Société des Nations dans un cadre qui pourrait être, selon les cas, régional ou continental. Pour éviter que les travaux de telles conférences puissent porter atteinte à l'esprit de coopération général du monde, qui doit être celui de la Société des Nations, la Conférence a d'ailleurs prévu des garanties précises. Bien que les travaux de ces conférences soient, comme ceux des conférences générales, soumis au contrôle du Conseil et de l'Assemblée, gardiens du Pacte, elle a décidé, de plus, que tous Membres de la Société qui se jugeraient intéressés aux questions qui y seraient traitées, y participeraient de plein droit.

L'institution des conférences partielles aurait non seulement l'avantage de faciliter ou de rendre possible le règlement, par la Société des Nations de certaines questions techniques qu'elle devrait, sans cela, renoncer à attaquer, mais encore de diminuer le nombre des conférences générales et de soulager le budget de la Société.

Sur un autre point, la Conférence de Barcelone, sans pouvoir, bien entendu, réformer elle-même les résolutions de l'Assemblée, a cru devoir demander à l'Assemblée, soit d'examiner une des conséquences de ses résolutions, soit même de la modifier. Il s'agit du mode de convocation des conférences ainsi que de ses conséquences quant au renouvellement de la Commission consultative et technique.

On sait, en effet, qu'à la suite des modifications apportées par la dernière Assemblée au texte des résolutions proposées par le Conseil, c'est exclusivement au Conseil qu'il appartient de convoquer les conférences générales. Il en résulte, d'une part, que comme aucune périodicité — même à larges intervalles — n'est assurée à ces conférences, il est impossible de prévoir avec certitude la date de renouvellement du mandat des Etats appelés par la Conférence, selon les décisions de l'Assemblée, à nommer des membres de la Commission. Toutefois, la Conférence ayant décidé que ce mandat ne devrait pas être supérieur à quatre ans, a attiré l'attention du Conseil sur la façon dont pourrait être opéré ce renouvellement après quatre ans.

D'autre part, la convocation exclusive des conférences par le Conseil a paru à la Conférence avoir cet inconvénient que les Etats non représentés au Conseil n'ont aucune garantie qu'une Conférence — qui pourrait être appelée à traiter des questions les intéressant vitalement — soit convoquée si les Etats Membres du Conseil, ou seulement l'un d'entre eux, par suite de l'unanimité exigée au Conseil, s'y opposaient. A l'unanimité, la Conférence a émis le vœu que l'Assemblée permit la réunion, de plein droit, d'une Conférence générale sur la demande d'un tiers au moins des Membres de la Société des Nations.

L'ensemble de l'œuvre de la Conférence de Barcelone fait l'objet d'un Acte final. Sans aucune exception, tous les représentants présents ont signé cet Acte final. Tous, sauf cinq¹, ont signé la recommandation sur les Ports. Tous, sauf trois,² ont signé la recommandation sur le Régime des Voies ferrées. Les Conventions ne pouvant être signées valablement à Barcelone que par ceux des repré-

¹ Roumanie, Pologne, Etat serbe-croate-slovène, Suisse, Venezuela.

² Roumanie, Suisse, Venezuela.

RULES OF ORGANISATION.

Finally, the Barcelona Conference had not only to draw up its own formal rules of procedure, but further, and in accordance with the Resolution of the Assembly, the rules of organisation for any general Conference on Communications and Transit, and for the Advisory and Technical Committee.

These rules are in strict conformity with the principles of the resolutions adopted by the Assembly, especially with those fixed by the Resolution of December 8th, on the relations between the technical organisations, the Council and the Assembly.

On one point alone, the Conference, without deviating from these principles, but believing itself animated rather by the spirit which dictated them, felt obliged to make an innovation by itself providing for the possible convocation, by the Council, of Conferences that would be not general, but limited; that is to say, composed of representatives of only a certain number of States which, mainly as a result of their geographical situation, would alone feel the importance of questions of a strictly regional or continental character. In its actual discussions, particularly in those upon the definition of navigable waterways of international concern, on the international régime of the railways, on the various transit conditions dependant on geographical or regional circumstances, the Conference realized that a large number of problems, the solution of which was difficult or impossible on a strictly universal scale, might with advantage form the subject of sufficiently wide international regulations, under the auspices of the League of Nations within either regional or continental limits. In order to prevent the work of such conferences from injuring the universal spirit of co-operation by which the League of Nations must be animated, the Conference laid down definite guarantees. Although the work of this Conference is, like that of the general Conferences, subject to the control of the Council and of the Assembly, guardians of the Covenant, it further decided that all Members of the League which considered themselves interested in the questions to be dealt with at such a Conference should have the right to attend.

The institution of limited conferences would have the advantage, not only of facilitating or even of making possible a ruling by the League of Nations on certain technical questions with which it could not otherwise attempt to deal, but, further, of decreasing the number of general Conferences, and diminishing the expenditure of the League.

With regard to a further point, the Barcelona Conference, without, of course, itself being able to modify the Resolutions of the Assembly, felt that it should request the Assembly to consider one of the results of its Resolutions, or even to modify it. The point in question was the method of summoning the Conferences, together with its effect on the renewal of the Advisory and Technical Committee.

Owing to the modifications effected by the last Assembly in the text of the resolutions proposed by the Council, the latter has the sole right to summon general Conferences. Consequently, as in the first place, there is no guarantee of the regular succession of these Conferences — even at long intervals — it is, therefore, impossible to predict with any certainty the date of renewal of the mandate of the States invited by the Conference, in conformity with the Assembly's decision, to nominate members of the Committee. The Conference, however, having resolved that the mandate should not exceed four years, has drawn the attention of the Council to the manner in which this renewal might be effected at the end of four years.

On the other hand, the summoning of Conferences exclusively by the Council seemed to the Conference to possess this disadvantage, that States not represented on the Council have no guarantee that a Conference, required for the settlement of questions of the most vital importance to them, would be summoned, if the States which are Members of the Council, or even one of them, in view of the unanimity required of the Council, opposed the measure. The Conference unanimously recommended that the Assembly should sanction, as a matter of course, a general Conference, on the request of at least onethird of the Members of the League of Nations.

The complete results of the work of the Barcelona Conference were embodied in a Final Act. All the Delegates present, without exception, signed this Final Act. All but five¹ signed the Recommendation on Ports. All but three² signed the Recommendation on Railways. As the Conventions could not be validly signed at Barcelona except by Delegates possessing full powers, the remaining Govern-

¹ Roumania, Poland, Serb-Croat-Slovene State, Switzerland, Venezuela.

² Roumania, Switzerland, Venezuela.

sentants qui avaient qualité de plénipotentiaire, les autres Gouvernements devaient être appelés à signer ultérieurement. Ainsi, la Convention sur la Liberté du Transit, adoptée à l'unanimité, moins une abstention, a été signée par vingt Etats¹. La Convention sur le Régime international des Voies navigables, votée à l'unanimité moins une voix et trois abstentions, a été signée par quinze Etats².

Enfin, cet Acte final lui-même ne résume pas la totalité de l'œuvre des délégations à la Conférence de Barcelone. La Conférence a, en effet, recueilli, de la plupart des Délégations, un ensemble sans précédent de renseignements précis et pratiques sur la situation générale des transports dans le monde, dont le rapport du président de la Conférence a montré toute l'importance. Elle en a dégagé les premières lignes et décidé la publication systématique. Elle a chargé, en outre, la Commission consultative et technique, appelée sur ce point comme sur tous les autres, à continuer son œuvre avant les futures conférences, de poursuivre continuellement et périodiquement cette besogne concrète d'intermédiaire impartial entre les Ministères techniques des différents pays, jusqu'ici trop isolés, trop souvent obligés de s'attaquer, en efforts dispersés, sans plan d'ensemble, sans coordination internationale, à cette crise générale des transports dont souffrent aujourd'hui toutes les nations de la terre et tous les rapports entre les peuples.

Le rapport de M. Hanotaux a esquissé également les grandes lignes de l'organisation intérieure de la Conférence qui lui a permis, en un laps de temps non supérieur à six semaines, de s'acquitter d'une tâche aussi lourde et d'aboutir à des conclusions précises sur tous les points d'un ordre du jour aussi chargé. Si l'on songe, en effet, que la Conférence de Barcelone n'avait pas seulement comme programme, à la manière d'autres conférences convoquées par la Société des Nations, de sonder sur certains problèmes l'opinion internationale pour en dégager les recommandations générales sur lesquelles il a été relativement facile de faire l'unanimité des Etats; qu'elle n'était pas non plus une simple conférence d'experts sans responsabilité directe devant leurs Gouvernements respectifs; qu'elle avait, au contraire, à conclure des engagements précis sur des questions touchant directement les intérêts matériels des peuples et impliquant par conséquent à chaque instant des sacrifices réciproques, des concessions, des négociations, alors il apparaît que ce n'est que grâce non seulement à la volonté de coordination de tous, mais encore à une stricte discipline intérieure, que la Conférence de Barcelone a pu si rapidement terminer ses travaux.

Les diverses questions étaient, en outre, si intimement liées les unes aux autres et toutes si importantes par leurs conséquences et leurs répercussions les unes sur les autres, qu'il était impossible, pour la plupart des délégations, d'en envisager l'étude simultanée.

Malgré cela, une convention telle que la Convention sur la Liberté du Transit, qui n'est pas un simple exposé de principes, mais qui comporte notamment, ainsi que la discussion le montre, des conséquences précises sur le taux et le mode d'application des tarifs de transports, a pu être achevée en moins de quinze jours. Une convention comme la Convention sur le Régime international des Voies navigables, dont les stipulations impliquent des obligations techniques et financières relatives notamment aux travaux d'entretien, à l'usage des ports, etc., a pu être élaborée en trois semaines et réaliser un accord presque unanime.

Ces résultats paraissent particulièrement encourageants pour l'avenir de l'œuvre de la Société des Nations. Il est désormais démontré que des conférences instituées par elle peuvent élaborer, après plus ou moins de discussions, après des négociations et des transactions plus ou moins laborieuses, non seulement des recommandations ou des vœux, mais encore des textes contractuels précis, marquant nettement la volonté de tous d'étendre peu à peu, par degrés, mais avec continuité, le domaine du droit des gens³.

¹ Autriche, Belgique, Bolivie, Bulgarie, Danemark, Espagne, Grande-Bretagne, Grèce, Guatemala, Etat serbe-croate-slovène, Inde, Italie, Lettonie, Nouvelle-Zélande, Panama, Perse, Pologne, Portugal, Tchéco-Slovaquie, Uruguay.

² Autriche, Belgique, Bolivie, Bulgarie, Danemark, Espagne, Grande-Bretagne, Guatemala, Inde, Italie, Nouvelle-Zélande, Panama, Pologne, Tchéco-Slovaquie, Uruguay.

Les chiffres suivants, communiqués par le Secrétariat général de la Conférence, donnent une indication matérielle des travaux accomplis à Barcelone : nombre de feuilles tirées au Ronéo et distribuées : 1.675.649, soit par jour de travail : 52.364.

ments were to be invited to sign later. Thus, the Convention on Freedom of Transit adopted unanimously, with one abstention, was signed by twenty States.¹ The Convention on the International Régime of Navigable Waterways, which was voted for by the whole Conference with a minority of one and three abstentions, was signed by fifteen States.²

The Final Act does not embrace the complete results of the work of the Delegations at the Barcelona Conference. For the Conference obtained, from the majority of the Delegations, an unparalleled quantity of exact and practical information relating to the general situation of transport throughout the world, the significance of which was fully recognised in the report of the president of the Conference. It sketched the general outlines and arranged for the systematic publication of this information. It directed the Advisory and Technical Committee (which, in this respect, as in others, is to proceed with its labours in the period before the assembly of future Conferences) to continue, both by constant and periodic action, the fulfilment of its concrete task as an impartial intermediary between the technical Ministries of the various States, which have hitherto been too much isolated, and too often obliged to make disconnected efforts, without any agreed plan or international system of co-ordination, to handle this great transport crisis, which is at present inflicting such injury on all the nations of the world and on all relations between peoples.

At the same time, M. Hanotaux's report gave a sketch of the main principles of the interior organisation of the Conference, showing how it was possible, in the space of not more than six weeks, to carry out so onerous a programme, and to arrive at a definite conclusion on each item of such a heavy agenda. When it is remembered that the programme of the Barcelona Conference did not merely consist (like that of other Conferences summoned by the League) in ascertaining international opinion regarding certain problems, in order to use it as a basis for a series of general recommendations for which it was comparatively easy to obtain unanimity, that it was not merely a Conference of experts having no direct responsibility to their respective Governments, but that, on the contrary, it had to conclude precise agreements on questions directly affecting the material welfare of nations, and consequently involving reciprocal sacrifices, concessions and negotiations at every step, it will be realised that it was only owing to the desire for co-operation among all the delegates, and a strict internal organisation, that the Barcelona Conference was able so rapidly to complete its work.

The different questions were so intimately connected and all so important, owing to their mutual reactions, that it proved impossible for the majority of the Delegations to deal with them simultaneously.

In spite of this fact, a Convention such as that on Freedom of Transit, which is not merely a statement of principles, but which particularly involves, as the discussion shows, definite effects on the rate and method of application of transport-tariffs, was concluded in less than a fortnight; while the Convention on the International Régime of Navigable Waterways, the provisions of which involve technical and financial obligations, particularly in connection with the work of upkeep of ports, etc., was drawn up in three weeks and met with almost unanimous approval.

These results are most encouraging for the future work of the League of Nations. Henceforth it may be regarded as a fact that Conferences instituted by it are capable of drafting, after a certain amount of discussion, and more or less laborious negotiations and compromises, not merely recommendations, or "vœux", but also definite agreements clearly indicating the general will to extend slowly but surely the domain of International Law.³

¹ Austria, Belgium, Bolivia, Bulgaria, Czecho-Slovakia, Denmark, Great Britain, Greece, Guatemala, India, Italy, Latvia, New Zealand, Panama, Persia, Poland, Portugal, Serb-Croat-Slovene State, Spain, Uruguay.

² Austria, Belgium, Bolivia, Bulgaria, Czecho-Slovakia, Denmark, Great Britain, Guatemala, India, Italy, New Zealand, Panama, Poland, Spain, Uruguay.

³ The following figures, communicated by the Secretary-General of the Conference, give a material indication of the work done at Barcelona: number of pages duplicated and distributed: 1,675,649. This makes an average of 52,364 pages per working day.

II

TRANSMISSION AU CONSEIL DES PROPOSITIONS DE LA CONFÉRENCE

Conformément aux termes de la résolution de l'Assemblée du 8 décembre 1920, les instruments adoptés par la Conférence de Barcelone ont été transmis au Conseil afin que celui-ci puisse examiner s'il y avait lieu pour lui d'user des droits de contrôle qui lui sont reconnus, sous réserve des droits de l'Assemblée elle-même, par ladite Résolution. Sur le rapport de S. E. M. Quiñones de León, le Conseil a estimé que, d'une part, les travaux de la Conférence de Barcelone n'étant pas en discordance avec le Pacte, et la Conférence de Barcelone, d'autre part, étant restée dans les limites de sa compétence, il n'y avait pas lieu pour lui d'intervenir.

Ces instruments ont, dans ces conditions, été transmis à tous les Gouvernements intéressés. Les Conventions, notamment, ont été transmises aux Gouvernements à fin de ratification pour ceux d'entre eux dont des plénipotentiaires avaient signé à Barcelone; elles ont été transmises à fin de signature et de ratification pour les autres.

Il y a lieu de noter que, depuis, le Gouvernement d'Esthonie a déjà fait procéder à la signature des Conventions sur la Liberté du Transit, sur les Voies navigables d'intérêt international et de la Déclaration sur le Droit au pavillon.

Le Conseil a été en même temps saisi des vœux de la Conférence de Barcelone — sur le renouvellement de la Commission consultative après quatre ans; sur le mode de convocation des conférences générales; sur la réunion ultérieure d'une conférence pour la conclusion d'une Convention sur le Régime international des Voies ferrées; sur la liberté du transit en temps de guerre — qui demandaient une action positive du Conseil seulement, ou du Conseil et de l'Assemblée.

On sait que le Conseil a décidé d'examiner ultérieurement la question soulevée par le vœu relatif à la liberté du transit en temps de guerre. Il s'est déclaré favorable en principe à la mise à exécution du vœu relatif à la Convention sur les Voies ferrées et a chargé la Commission consultative d'en engager la préparation. Quant aux vœux relatifs au renouvellement de la Commission consultative après quatre ans et la réunion de plein droit d'une Conférence générale sur demande d'un tiers des Membres de la Société, le Conseil les a transmis, en vue de toutes propositions utiles, à la Commission consultative, en se déclarant d'ailleurs d'accord en principe sur ce dernier point.

Le Conseil avait été également saisi d'un vœu de la Conférence de Barcelone relatif à une question qui sortait de la compétence de cette Conférence, à savoir l'opportunité d'appliquer non seulement la partie de l'article 23 e) du Pacte qui vise les Communications et le Transit, mais aussi celle qui touche l'équitable traitement du commerce. Le Conseil s'est également déclaré favorable en principe au but poursuivi par ce vœu, mais il a décidé, ses conséquences étant particulièrement complexes, d'en réserver l'examen.

Enfin, les vœux purement techniques de la Conférence de Barcelone qui ne demandaient aucune action du Conseil ou de l'Assemblée, ont été transmis directement de la Conférence à la Commission consultative, en conformité de la résolution du 8 décembre sur les organisations techniques.

II.

TRANSMISSION TO THE COUNCIL OF THE PROPOSALS OF THE CONFERENCE.

In accordance with the Assembly Resolution of December 8th, 1920, the instruments adopted by the Barcelona Conference were transmitted to the Council, in order that the latter might consider whether there was any need for it to exercise the power of control with which it is invested — without prejudice to the rights of the Assembly itself — under the terms of this Resolution. On the report of H. E. M. Quiñones de León, the Council considered that, as the work of the Barcelona Conference was not at variance with the Covenant, and as the Conference had not exceeded the limits of its competence, there was no need for it to intervene.

Under these circumstances, these instruments have been forwarded to all the Governments concerned. The Conventions have been forwarded for ratification to the Governments whose plenipotentiaries signed them at Barcelona; as regards the others, the Conventions have been sent to them for signature and ratification.

It may be noted that, since that time, the Esthonian Government has signed Conventions on Freedom of Transit, on Waterways of International Concern, and the Declaration regarding the right to a flag.

At the same time, those recommendations of the Barcelona Conference which called for positive action, either on the part of the Council alone, or on the part of the Council and the Assembly, were submitted to the Council. These recommendations dealt with the renewal of the Advisory Committee after a period of four years, the method of summoning general Conferences, the subsequent meeting of the Conference for the purpose of concluding a Convention on the international régime of railways, and freedom of transit in time of war.

The Council has decided to examine, at a later date, the question raised by the recommendation regarding freedom of transit in time of war. The Council decided, in principle, in favour of putting into practice the recommendation regarding the Convention on Railways, and has entrusted the Advisory Committee with the preliminary work. As to the recommendations regarding the renewal of the Advisory Committee after four years, and the statutory meeting of a general Conference at the request of one-third of the Members of the League, the Council has forwarded them — with a view to any proposals which it might be desirable to make — to the Advisory Committee, with the statement that it was in agreement, in principle, with this last point.

A recommendation of the Barcelona Conference regarding a question outside the competence of this Conference — namely, the desirability of applying, not only that part of Article 23e of the Covenant which refers to communications and transit, but also that which deals with the equitable treatment of commerce — was also submitted to the Council. The Council declared itself, in principle, in favour of the object of this recommendation, but, in view of the particularly complex nature of the consequences involved, it decided to reserve the consideration of this recommendation.

The purely technical recommendations of the Barcelona Conference, which did not call for any action on the part of the Council or of the Assembly, were sent direct from the Conference to the Advisory Committee, in conformity with the Resolution of December 8th regarding technical organisations.

III

RÉUNION DE LA COMMISSION CONSULTATIVE ET TECHNIQUE DES COMMUNICATIONS ET DU TRANSIT

La Commission consultative et technique des Communications et du Transit, dès sa première réunion, était donc déjà chargée de l'examen d'un certain nombre de questions particulièrement importantes.

Cette Commission, à la suite du vote de la Conférence de Barcelone, comprend des membres désignés par chacun des Etats suivants : Belgique, Brésil, Chine, Empire britannique, Espagne, France, Italie, Japon, Etats Membres du Conseil; Chili, Cuba, Danemark, Pays-Bas, Pologne, Suisse, Uruguay, Etats Membres de la Société des Nations; Esthonie, Membre des organisations techniques.

Les Etats représentés d'une façon permanente au Conseil nomment de droit un membre; les autres Etats ont été élus par la Conférence de Barcelone.

Il est à signaler que le Règlement intérieur de la Conférence permettait à un certain nombre d'Etats de se grouper entre eux de telle manière que les votes dont bénéficiait l'un quelconque des Etats faisant partie du groupement soient reportés automatiquement sur un seul et à éviter ainsi la dispersion.

Les Etats scandinaves, d'une part, les Etats baltiques, d'autre part, enfin la Pologne et la Finlande ont fait usage et ont bénéficié de ce procédé de groupement. A ce propos, le Conseil, ayant constaté que si l'universalité du monde était remarquablement représentée à la Commission consultative, toutefois, par suite de la limitation du nombre des membres, il se trouvait qu'aucun des Etats riverains du Danube n'était appelé à désigner un membre de la Commission, malgré leur compétence particulière dans un grand nombre de questions qui devaient être traitées éventuellement par la Commission, avait également invité la Commission consultative et technique à examiner dans sa première session l'opportunité et les moyens d'associer d'une façon aussi complète et permanente que possible à ses travaux un ou plusieurs de ces Etats.

La Commission consultative et technique des Communications et du Transit s'est réunie à Genève le 25 juillet. Elle devait, dans sa première session, accomplir un triple travail, à savoir : constituer son organisation intérieure, examiner les vœux de la Conférence de Barcelone transmis par la Conférence ou par le Conseil, enfin prendre la suite du Comité provisoire des Communications et du Transit en examinant les diverses questions pratiques engagées déjà, avant la réunion de la Conférence de Barcelone, par ce Comité.

En ce qui concerne sa constitution, la Commission consultative a d'abord élaboré son Règlement intérieur. En conformité de ce Règlement, elle a élu pour un an seulement son Président et ses Vice-Présidents, estimant que dans les organismes relevant de la Société des Nations, le principe du roulement de la présidence devait être obligatoire.

Afin de diminuer, dans la mesure du possible, la fréquence des séances de la Commission et de se conformer strictement aux intentions de l'Assemblée qui a voulu éviter la création de grandes organisations permanentes, la Commission a décidé de créer de petites sous-commissions dans lesquelles pourrait être réparti le travail de première élaboration des résolutions de la Commission. C'est ainsi qu'ont déjà été créées trois sous-commissions, pouvant se réunir, le cas échéant, sans qu'il soit besoin de convoquer la Commission; à savoir: une sous-commission pour les transports par voies ferrées, une sous-commission pour les transports par eau et une sous-commission pour les affaires générales et statistiques. La composition et le bureau de la Commission et des sous-commissions sont en annexe (Annexe I).

Le travail de ces sous-commissions, comme celui de la Commission plénière, peut comporter l'assistance d'experts, ainsi qu'il a été prévu à l'article 5 du Règlement d'organisation adopté à Barcelone. En conformité des dispositions de cet article, qui avait été d'ailleurs rappelé à son attention par le Conseil, la Commission a pu déférer au désir du Conseil, auquel elle s'est entièrement jointe, d'associer les Etats riverains du Danube à ses travaux. Elle a, dès à présent, désigné un expert tchécoslovaque en matière de chemins de fer pour l'assister dans son œuvre. Elle pourra éventuellement, dans la mesure des besoins, faire appel à d'autres compétences.

Dans le même ordre d'idées, la Commission a reçu communication du projet de budget de l'Organisation des Communications et du Transit pour l'année 1922.

III.

MEETING OF THE ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT.

The Advisory and Technical Committee for Communications and Transit had, therefore, at its first meeting to examine a certain number of questions of special importance.

In accordance with the decisions of the Barcelona Conference, this Committee includes members appointed by each of the following States: Belgium, Brazil, China, British Empire, France, Italy, Japan, Spain, States Members of the Council; Chile, Cuba, Denmark, the Netherlands, Poland, Switzerland, Uruguay, States Members of the League of Nations; Esthonia, Member of the Technical Organisations.

States permanently represented on the Council have the right to appoint one member; the other States were elected by the Barcelona Conference.

It should be pointed out that the rules of procedure of the Conference allowed a certain number of States to group themselves together in such a way that the votes at the disposal of any one of the States forming part of any such group were automatically registered in favour of a single State, with the object of avoiding dispersion.

Advantage was taken of this method of grouping by the Scandinavian States, the Baltic States and also by Poland and Finland. In this connection, the Council saw that, though the world, as a whole, was remarkably well represented on the Advisory Committee, yet, as a result of the limitation of the number of members, none of the riparian States of the Danube was called upon to appoint a member of the Committee, in spite of the fact that they were particularly competent to deal with a large number of questions which must eventually be dealt with by the Committee; the Council therefore recommended the Advisory and Technical Committee to consider at its first meeting the desirability and the means of associating one or more of these States in its labours in as complete and permanent a way as possible.

The Advisory and Technical Committee for Communications and Transit met at Geneva on July 25th. At its first meeting, it had a triple task to fulfil, namely, to adopt its rules of procedure, to consider the recommendations of the Barcelona Conference as transmitted by the Conference or by the Council, and to continue the work of the Provisional Committee for Communications and Transit by considering the various practical problems with which this Committee had been dealing before the meeting of the Conference at Barcelona.

As regards its constitution, the Advisory and Technical Committee first of all drew up its rules of procedure. In accordance with these rules, it elected its president and vice-presidents for one year only, as it considered that in the organisations under the League of Nations the principle of rotation should be obligatory with regard to the office of president.

In order to reduce, as far as possible, the number of meetings of the Committee, and to conform strictly to the intentions of the Assembly, which desired to avoid the creation of large permanent organisations, the Committee decided to form small Sub-Committees to divide the preliminary work of preparing the resolutions of the Committee. Three Sub-Committees have already been formed with the right to meet, if necessary, without there being any need to convene the whole Committee. That is to say: a Sub-Committee for transport by rail, a Sub-Committee for transport by water, and a Sub-Committee for general affairs and statistics. The composition and the officers of the Committee and the Sub-Committees are given in an annex (Annex I).

The work of these Sub-Committees, like that of the Full Committee, may involve the assistance of experts, as provided for by Article 5 of the Rules of Organisation adopted at Barcelona. In conformity with the provisions of this Article, to which its attention had, moreover, been drawn by the Council, the Committee was able to comply with the desire of the Council, in which it entirely concurred, that the Danube riparian States should be associated in its work. It has already appointed a Czecho-Slovak expert on railways. If the need arises, it may call upon further expert advice.

Similarly, the Committee has received the draft budget for the Organisation of Communications and Transit for the year 1922. It has recommended that,

A ce propos, elle a émis le vœu que, dans l'avenir, les projets de budgets lui soient communiqués avant leur approbation par le Conseil.

Elle a également attiré l'attention du Conseil et de l'Assemblée sur le vœu que les frais afférents au budget devraient être répartis entre tous les Etats, Membres de la Société des Nations ou non, qui font partie de l'Organisation des Communications et du Transit. Ce vœu a été transmis au Conseil.

En ce qui concerne les vœux de la Conférence de Barcelone, la Commission a renvoyé à l'examen des sous-commissions compétentes le vœu relatif à la Convention sur les Voies ferrées, avec mission d'en engager le plus tôt possible les travaux préparatoires, ainsi que deux vœux transmis directement par la Conférence, l'un portant sur la simplification des tarifs intérieurs des chemins de fer, et l'autre sur la cession d'énergie hydraulique entre Etats.

Elle a estimé que le vœu relatif au renouvellement de la Commission consultative et technique après quatre ans n'était pas d'un examen urgent et ne nécessitait pas une action de l'Assemblée dès 1921; aussi elle a décidé de ne faire pour le moment aucune proposition à ce sujet à l'Assemblée. En revanche, elle s'est associée au vœu de la Conférence de Barcelone, approuvé par le Conseil, relatif à la réunion de plein droit des conférences générales sur demande d'un tiers des Membres de la Société des Nations. Elle a adopté à ce sujet un projet de résolution joint en annexe (Annexe II) qu'elle propose à l'adoption de l'Assemblée.

La Commission a cru devoir porter à la connaissance du Président du Conseil de la Société des Nations l'intérêt qu'il y aurait à ce que la date à laquelle expire le délai pour la signature des Conventions fût rappelée aux gouvernements représentés à Barcelone et qui n'ont pas encore signé les Conventions qui y furent adoptées, et la nécessité d'attirer leur attention sur l'avantage qu'il y aurait à ce qu'ils puissent désigner aussitôt que possible les plénipotentiaires chargés de procéder à cette signature.

En ce qui concerne l'examen des questions déjà antérieurement posées devant le Comité provisoire des Communications et du Transit, la Commission s'est surtout attachée à reprendre l'œuvre engagée pour la simplification des passeports, formalités douanières, et l'extension des services de chemins de fer à billets directs.

Une conférence qui comprenait les représentants spécialistes de tous les Etats européens ainsi que de la Chine et du Japon, avait été tenue sur l'initiative du Comité provisoire à Paris, en octobre 1920. Un projet précis du régime des passeports y avait été établi d'un accord unanime sur presque tous les points. Les recommandations de cette Conférence des Passeports, Formalités douanières et Billets directs, ont été transmises à tous les Gouvernements.

Un certain nombre de progrès ont déjà été réalisés. Mais, dans une question qui intéresse à un si haut point les communications entre les peuples, et devant l'accord unanime des spécialistes à la Conférence, la Commission a estimé que la Société des Nations ne devait pas se contenter d'un succès partiel, mais faire encore une fois appel à la bonne volonté de tous les Gouvernements pour réaliser, dans toute la mesure du possible, les simplifications et les améliorations suggérées par la Conférence. Aussi a-t-elle décidé de prier l'Assemblée d'attirer sur ce point l'attention de tous les Membres de la Société en une résolution jointe en annexe (Annexe III).

La question de l'application des formalités des passeports aux membres des Commissions de la Société des Nations fait aussi l'objet d'un texte soumis à l'Assemblée (Annexe IV).

Dès après sa première réunion, la Commission consultative et technique a conscience qu'immédiatement, et de plus en plus à mesure qu'entreront en vigueur les Conventions de Barcelone, elle sera appelée à jouer dans ce domaine technique, et bien qu'en restant strictement dans sa mission de simple organe consultatif des Membres de la Société, de l'Assemblée et du Conseil, un rôle qui peut devenir essentiel pour la pacification entre les peuples et pour l'augmentation du bien-être général. Organisme de liaison entre les administrations techniques de tous les pays, chargé de l'initiative parfois difficile de proposer les mesures propres à assurer, à tout moment, la liberté des communications et du transit, il lui appartient d'élever entre eux, par ses avis et ses suggestions, par l'autorité morale qu'elle doit se proposer d'acquérir, la conscience de leur solidarité d'intérêts et la volonté de coordonner leurs efforts.

in future, the draft budgets should be communicated to it before they are approved by the Council.

It has also drawn the attention of the Council and of the Assembly to the recommendation that the expenses in this budget should be divided among all the States, whether Members of the League or not, which form part of the Organisation for Communications and Transit. This recommendation has been transmitted to the Council.

The Committee has referred to the appropriate Sub-Committees for consideration, the recommendation regarding the Convention on Railways with instructions to proceed as soon as possible with the preparatory work, together with two resolutions transmitted directly by the Conference, one on the simplification of internal railway rates and the other referring to the cession of hydraulic power from one State to another.

The Committee considered that the recommendation concerning the renewal of the Advisory and Technical Committee after four years did not require urgent consideration, nor necessitate action by the Assembly in 1921; it therefore decided to lay no proposal on this matter, for the moment, before the Assembly. On the other hand, it associated itself unanimously with the recommendation of the Barcelona Conference, approved by the Council, concerning fully authorised meetings of General Conferences upon the request of one-third of the Members of the League of Nations. It adopted a draft resolution, which is attached (Annex II), proposed for adoption by the Assembly.

The Committee thought that it ought to bring to the notice of the President of the Council of the League of Nations the importance of reminding the Governments represented at Barcelona which had not yet signed the Conventions, there adopted, of the date on which the time limit for the signature of these Conventions expired, and of the necessity of drawing their attention to the advantages of appointing, as soon as possible, plenipotentiaries with instructions to perform the act of signature.

As regards the consideration of the questions previously laid before the Provisional Committee for Communications and Transit, the Committee has devoted special attention to the resumption of the work undertaken for the simplification of passports, Customs formalities and the extension of railway services with through tickets.

A Conference, which included expert representatives of all the European States, as well as of China and Japan, was held on the initiative of the Provisional Committee in Paris in October, 1920. A definite plan to deal with passports was there drawn up, unanimous agreement being obtained on almost all points. The recommendations of this Conference on passports, Customs formalities and through tickets have been transmitted to all the Governments.

A certain amount of progress has already been made, but considering the importance of the question of communications between nations, and in view of the unanimous agreement of the experts attending the Conference, the Committee thought that the League of Nations should not rest content with a partial success, but that it should once again appeal to the goodwill of all the Governments, urging them to carry out, as far as possible, the simplifications and improvements suggested by the Conference. It therefore decided to ask the Assembly to draw the attention of all the Members of the League to this point in the attached resolution (Annex III).

The question of the application of passport formalities to members of the Committees of the League of Nations, is also the subject of a document submitted to the Assembly (Annex IV).

Immediately after its first meeting, the Advisory and Technical Committee realised that, though restricted to its capacity as an advisory organisation of the Members of the League, the Assembly and the Council, it would at once, and to an increasing degree as the Barcelona Conventions came into force, be called upon to play a great part in their technical work — a part which might become essential for the maintenance of peace between nations and for the development of the general welfare. As the organisation forming the link between the technical administrations of all the countries, and entrusted with the sometimes difficult duty of initiating the proposal of measures to assure the continuous freedom of communications and transit, it should endeavour by advice and by suggestion, by the moral authority which it should obtain, to educate all countries to a stronger feeling of close union of interests and to a greater desire for co-operation.

ANNEXE I

COMMISSION CONSULTATIVE ET TECHNIQUE DES COMMUNICATIONS ET DU TRANSIT.

Président : M. le Jonkheer Dr W. J. M. van EYSINGA. (Désigné par le Gouvernement des Pays-Bas.)

Professeur à l'Université de Leyde, Membre de la Commission centrale pour la Navigation du Rhin.

Vice-présidents : M. J. E. BALDWIN. (Désigné par le Gouvernement de l'Empire britannique.)

Représentant de la Grande-Bretagne dans les Commissions fluviales.

Son Excellence M. Benjamin FERNANDES Y MEDINA. (Désigné par le Gouvernement de l'Uruguay.)

Ministre plénipotentiaire en Espagne.

Son Excellence le Docteur Aristides de AGUERO Y BETHANCOURT. (Désigné par le Gouvernement de Cuba.)

Envoyé extraordinaire, Ministre plénipotentiaire à Berlin.

M. AMUNATEGUI. (Désigné par le Gouvernement du Chili.)

Secrétaire général des Tribunaux arbitraux mixtes.

M. Guillermo BROCKMANN. (Désigné par le Gouvernement de l'Espagne.)

Inspecteur général des Ponts et Chaussées.

M. Albert CLAVEILLE. (Désigné par le Gouvernement de la France.)

Sénateur, ancien Ministre des Travaux publics, Président de la Commission centrale pour la Navigation du Rhin.

M. le Docteur Robert HEROLD. (Désigné par le Gouvernement de la Suisse.)

Directeur des Chemins de fer du Toggenburg, Privat-Docent à l'Université de Zurich.

M. P. A. HOLCK-COLDING. (Désigné par le Gouvernement du Danemark.)

Chef de Bureau au Ministère des Travaux publics.

M. E. MONTARROYOS. (Désigné par le Gouvernement du Brésil.)

Ingénieur, ancien Capitaine d'Etat-Major.

Son Excellence M. Charles-Robert PUSTA. (Désigné par le Gouvernement de l'Esthonie.)

Ministre plénipotentiaire à Paris.

M. S. SATAKE. (Désigné par le Gouvernement du Japon.)

Ancien Directeur général au Ministère des Chemins de Fer.

M. Girolamo SINIGALIA. (Désigné par le Gouvernement de l'Italie.)

Inspecteur supérieur des Chemins de Fer du Royaume d'Italie, Représentant de l'Italie aux Commissions fluviales.

M. le Docteur STIEVENARD. (Désigné par le Gouvernement de la Belgique.)

Membre de la Délégation belge à la Commission centrale pour la Navigation du Rhin.

M. le Docteur TCHEOU-WEI. (Désigné par le Gouvernement de la Chine.)

Ingénieur des Chemins de Fer.

M. Bohdan WINIARSKI. (Désigné par le Gouvernement de la Pologne.)

Professeur à la Faculté de Droit de l'Université de Poznan.

ANNEX I.

ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT.

President: Jonkheer Dr. W. J. M. van EYSINGA. (Appointed by the Government of the Netherlands.)

Professor at the University of Leyden, Member of the Central Commission of the Rhine.

Vice-Presidents: Mr. J. E. BALDWIN. (Appointed by the Government of the British Empire.)

British Representative on the Waterways Commissions.

His Excellency M. Benjamin FERNANDES Y MEDINA. (Appointed by the Government of Uruguay.)

Minister Plenipotentiary in Spain.

His Excellency Dr. Aristides de AGUERO Y BETHANCOURT. (Appointed by the Government of Cuba.)

Envoy Extraordinary and Minister Plenipotentiary in Berlin.

M. AMUNATEGUI. (Appointed by the Government of Chile.)

Secretary-General of the Mixed Courts of Arbitration.

M. Guillermo BROCKMANN. (Appointed by the Government of Spain.)

Inspector-General of Bridges and Roads.

M. Albert CLAVEILLE. (Appointed by the Government of France.)

Senator, former Minister of Public Works, President of the Central Commission of the Rhine.

Dr. Robert HEROLD. (Appointed by the Government of Switzerland.)

Director of Railways of Toggenburg, Privat-Docent at the University of Zurich.

M. P. A. HOLCK-COLDING. (Appointed by the Government of Denmark.)

Chef de Bureau at the Ministry of Public Works.

M. E. MONTARROYOS. (Appointed by the Government of Brazil.)

Engineer, former Staff Captain.

His Excellency M. Charles Robert PUSTA. (Appointed by the Government of Esthonia.) Minister Plenipotentiary in Paris.

M. S. SATAKE. (Appointed by the Government of Japan.)

Former Director-General at the Ministry of Railways.

M. Girolamo SINIGALIA. (Appointed by the Government of Italy.)

Chief Inspector on the State Railways, Italian Representative on the Waterways Commissions.

Dr. STIEVENARD. (Appointed by the Government of Belgium.)

Member of the Belgian Delegation of the Central Commission of the Rhine.

Dr. TCHEOU-WEI. (Appointed by the Government of China.)

Railway Engineer.

M. Bohdan WINIARSKI. (Appointed by the Government of Poland.)

Professor of Law at the Poznan University.

SOUS-COMMISSION POUR LES TRANSPORTS PAR VOIES FERRÉES.

MM. CLAVEILLE, Président.
SATAKE, Vice-Président.
SINIGALIA.
BROCKMANN.
HEROLD.
AMUNATEGUI.
BALDWIN.

SOUS-COMMISSION POUR LES TRANSPORTS PAR EAU.

MM. MONTARROYOS, Président.
WINIARSKI, Vice-Président.
BALDWIN.
van EYSINGA.
FERNANDES Y MEDINA.
STIEVENARD.
TCHEOU-WEI.
AGUERO Y BETHANCOURT (pour les questions maritimes).

SOUS-COMMISSION POUR LES AFFAIRES GÉNÉRALES ET STATISTIQUES.

MM. SINIGALIA, Président.
HOLCK-COLDING, Vice-Président.
AGUERO Y BETHANCOURT.
TCHEOU-WEI.
PUSTA.

ANNEXE II

PROJET DE RÉSOLUTION
PROPOSÉE A L'ADOPTION DE L'ASSEMBLÉE PAR LA COMMISSION CONSULTATIVE
ET TECHNIQUE LE 26 JUILLET 1921.

Sans préjudice des dispositions du 4^o du § 1 de la résolution du 9 décembre 1920 sur l'Organisation des Communications et du Transit, les Conférences générales des Communications et du Transit se réuniront au siège de la Société des Nations de plein droit, sur la demande d'un tiers des Membres de la Société des Nations. Une telle demande devra être adressée au Secrétaire général de la Société, l'ordre du jour de la Conférence étant joint à la demande. Le Secrétaire général de la Société sera chargé de convoquer la Conférence.

SUB-COMMITTEE FOR TRANSPORT BY RAIL.

MM. CLAVEILLE, President.
SATAKE, Vice-President.
SINIGALIA.
BROCKMANN.
HEROLD.
AMUNATEGUI.
BALDWIN.

SUB-COMMITTEE FOR TRANSPORT BY WATER

MM. MONTARROYOS, President.
WINIARSKI, Vice-President.
BALDWIN.
van EYSINGA.
FERNANDES Y MEDINA.
STIEVENARD.
TCHEOU-WEI.
AGUERO Y BETHANCOURT (for maritime questions).

SUB-COMMITTEE FOR GENERAL AFFAIRS AND STATISTICS.

MM. SINIGALIA, President.
HOLCK-COLDING, Vice-President.
AGUERO Y BETHANCOURT.
TCHEOU-WEI.
PUSTA.

ANNEX II.

DRAFT RESOLUTION

PROPOSED, ON JULY 26TH, 1921, BY THE ADVISORY AND TECHNICAL COMMITTEE,
FOR THE APPROVAL OF THE ASSEMBLY.

Without prejudice to the terms of paragraph 4, of section 1 of the Resolution of December 9th, 1920, relating to the Organisation for Communications and Transit, the general Conferences on Communications and Transit shall meet *ex officio* at the seat of the League on the request of one-third of the Members of the League. Such request shall be addressed to the Secretary-General of the League, and the Agenda of the Conference should be attached to the request. It shall be the duty of the Secretary-General of the League to convene the Conference.

ANNEXE III

PROJET DE RÉSOLUTION
PROPOSÉE A L'ADOPTION DE L'ASSEMBLÉE PAR LA COMMISSION CONSULTATIVE
ET TECHNIQUE LE 26 JUILLET 1921.

La Commission, ayant pris connaissance des réponses adressées par les divers gouvernements à la suite des résolutions adoptées par la Conférence des Passeports, Formalités douanières et Billets directs, tenue à Paris en octobre 1920, constate avec la plus vive satisfaction qu'un certain nombre d'Etats ont déjà mis en vigueur une partie des mesures, si importantes pour les relations entre les peuples, préconisées à l'unanimité par cette Conférence relativement à la simplification des formalités d'obtention et de visa de passeports, à la réduction des prix et à l'unification du régime des passeports.

Elle prie l'Assemblée d'attirer l'attention de tous les Etats qui n'ont pas encore pu accueillir les recommandations de la Conférence, sur l'urgence qu'il y aurait à reprendre l'étude de la question et à informer le Secrétaire général de la Société des solutions ultérieurement adoptées.

ANNEXE IV

PROJET DE RÉSOLUTION
PROPOSÉE A L'ADOPTION DE L'ASSEMBLÉE PAR LA COMMISSION CONSULTATIVE
ET TECHNIQUE LE 27 JUILLET 1921.

Les membres des diverses Commissions de la Société seront admis à jouir, pendant la durée de leur mandat, de toutes facilités possibles en matière de passeports, notamment en ce qui concerne la concession des visas et leur durée.

ANNEX III.

DRAFT RESOLUTION

PROPOSED, ON JULY 26TH, 1921, BY THE ADVISORY AND TECHNICAL COMMITTEE,
FOR THE APPROVAL OF THE ASSEMBLY.

The Committee, having taken note of the replies sent by the various Governments to the resolutions adopted by the Conference on Passports, Customs Formalities and Through Tickets, held at Paris in October, 1920, notes with great satisfaction that a certain number of States have already put into effect a proportion of the measures, so important from the point of view of international relations, which were unanimously recommended by this Conference, relating to the simplification of formalities for obtaining passports and visas, to the reduction in their cost and the unification of the passport system.

The Committee begs the Assembly to draw the attention of all the States which have not yet been able to accept the Recommendations of the Conference to the urgency of a reconsideration of the question and of notification to the Secretary-General of the League of Nations of any subsequent solutions adopted.

ANNEX IV.

DRAFT RESOLUTION

PROPOSED, ON JULY 27TH, 1921, BY THE ADVISORY AND TECHNICAL COMMITTEE
FOR THE APPROVAL OF THE ASSEMBLY.

All possible passport facilities — particularly in regard to the granting of visas and their duration — shall be granted to members of the various Committees of the League during the period of their service.

II. RAPPORT DE S. E. M. QUINONES DE LEON ADOPTÉ PAR LE CONSEIL LE 2 SEPTEMBRE 1921.

La Commission consultative et technique des Communications et du Transit qui n'a tenu, à l'heure actuelle, qu'une session entre le 25 et le 28 juillet dernier, a adressé au Conseil, pour être soumis à l'Assemblée, un rapport général extrêmement complet sur l'œuvre de l'Organisation des Communications et du Transit entre la première et la deuxième session de l'Assemblée.

Par ce rapport, le Conseil et l'Assemblée auront ainsi non seulement un tableau technique d'ensemble des questions posées et traitées à la Conférence de Barcelone, constitutive de l'Organisation, mais encore pourront voir avec la plus grande satisfaction comment la Commission consultative — créée par la dernière Assemblée et issue de la Conférence de Barcelone — s'est, dès sa première réunion, engagée dans la voie des réalisations immédiates.

En particulier, le Conseil ne peut manquer de prendre connaissance avec intérêt de la suite donnée par la Commission du Transit aux diverses résolutions adoptées par le Conseil à sa dernière session — mentionné page 8 du rapport.

Le Conseil, on s'en souvient, avait renvoyé à l'examen de la Commission du Transit un certain nombre de vœux de la Conférence de Barcelone, quelques-uns en vue de présenter à la prochaine Assemblée des projets de résolutions.

Le Conseil avait également invité la Commission consultative à examiner l'opportunité et les moyens d'associer à ses travaux, d'une façon aussi complète et permanente que possible, un ou plusieurs Etats riverains du Danube. La Commission, dans son rapport, montre qu'elle a donné satisfaction au désir exprimé par le Conseil en désignant pour l'assister un expert tchéco-slovaque. L'invitation de la Commission de s'associer au vœu du Conseil ressort d'ailleurs avec plus de détails de la lettre ci-jointe adressée par le Président de la Commission au Président du Conseil.

Dans ces conditions, il me semble que le Conseil ne peut que transmettre à l'Assemblée le rapport présenté par la Commission consultative et technique, en rendant hommage aux résultats de la première année d'existence de l'Organisation des Communications et du Transit.

GENÈVE, le 29 juillet 1921.

Monsieur le Président,

La Commission consultative et technique des Communications et du Transit a pris connaissance de la résolution adoptée par le Conseil le 18 juin, relative à la participation des Etats riverains du Danube aux travaux de la Commission.

La Commission a été unanime à manifester le désir de s'inspirer de cette résolution, mais elle a toutefois considéré que, conformément au rapport même de M. Quiñones de León, le seul moyen mis à sa disposition à cet effet par le règlement, était l'article 5 qui prévoit la nomination d'experts dans les différentes matières qui sont l'objet des études de la Commission.

A cet égard, ayant constaté la nécessité d'avoir recours immédiatement aux services d'un expert dans les matières de chemins de fer, en connexion avec les travaux de la première sous-commission, qui a déjà des questions concrètes de cette nature à son ordre du jour, la Commission a cru devoir désigner dès à présent un expert dans la personne de M. Lankas, Directeur des Transports au Ministère des Chemins de fer tchéco-slovaques, et elle est heureuse de constater que M. Lankas, appartient, d'autre part, à un des Etats auxquels se réfère la résolution du Conseil.

La Commission a également l'honneur d'informer le Conseil qu'elle a l'intention, au fur et à mesure que la nécessité s'en présentera, de procéder de la même façon à la nomination d'autres experts

II. REPORT OF H. E. M. QUINONES DE LEON ADOPTED BY THE COUNCIL ON SEPTEMBER 2nd, 1921.

The Advisory and Technical Committee for Communications and Transit, which so far has only held one meeting, from July 25th to July 28th, has addressed to the Council, for submission to the Assembly, a detailed general report on the work done by the Organisation for Communications and Transit between the first and second sessions of the Assembly.

This report will furnish the Council and the Assembly not only with an expert survey of the whole of the questions submitted to the Barcelona Conference, which constituted the Organisation, and dealt with by that Conference, but will also enable them to apprehend with great satisfaction the manner in which the Advisory Committee, instituted by the last Assembly and set up by the Barcelona Conference, proceeded at its very first meeting to engage itself in work productive of immediate results.

In particular, the Council will note with interest the effect given by the Transit Committee to the various resolutions adopted by the Council at its last meeting (see page 8 of the report.)

It will be remembered that the Council had referred to the Transit Committee for consideration some of the recommendations of the Barcelona Conference, in certain cases in order that draft resolutions might be submitted to the next Assembly.

The Council had also invited the Advisory Committee to consider the desirability and the means of associating with it in its work one or more of the Riparian States of the Danube, in as complete and permanent a way as possible. In its report, the Committee shows that it has appointed a Czecho-Slovak expert to assist it in its work, in conformity with the desire of the Council. The Council's invitation to the Committee to associate itself with the Council's recommendation is illustrated more completely by the attached letter from the President of the Committee to the President of the Council.

Under these circumstances it appears to me that the Council can only transmit to the Assembly the report presented by the Advisory and Technical Committee, acknowledging at the same time the value of the results obtained by the Organisation for Communications and Transit in its first year of existence

(Translation.)

GENEVA, July 29th, 1921.

Sir,

The Advisory and Technical Committee for Communications and Transit has noted the Resolution, adopted by the Council on June 18th, concerning the participation of the Riparian States of the Danube in the work of the Committee.

The Committee was unanimous in its desire to give effect to this Resolution, but, it considered that the only means to this end possible under the Regulations, as is shown by the Report of M. Quiñones de León, was Article 5, providing for the appointment of experts on the different subjects which are under consideration by the Committee.

In view of these considerations, as the necessity had arisen for immediate recourse to the services of an expert on railways in connection with the work of the first Sub-Committee, (which is already considering concrete questions of this type), the Committee considered itself called upon to appoint immediately, as an expert, Mr. Lankas, Director of Transport in the Czecho-Slovak Ministry of Railways, and it is glad to be able to state that Mr. Lankas is a national of one of those States referred to in the Resolution of the Council.

The Committee has also the honour to inform the Council that it proposes to proceed in the same manner to the appointment of other experts, as occasion arises.


En particulier, la Commission croit qu'il pourra y avoir probablement lieu à la désignation d'un expert pour les questions de transports par eau, et la Commission sera heureuse si cette désignation peut se porter sur des personnalités ressortissantes de l'un des Etats riverains du Danube.

Je vous prie de croire, Monsieur le Président, à l'assurance de ma très haute considération.

(Signé) EYSINGA,

*Président de la Commission
consultative et technique
des Communications et du Transit.*

A Monsieur le Président du Conseil
de la Société des Nations.



In particular, the Committee believes that it will probably be necessary to appoint an expert for the question of Transport by Water, and it will be glad if this appointment can be made from among nationals of one of the Riparian States of the Danube.

I have the honour, etc.

(Signed) EYSINGA,

*President of the Advisory and Technical
Committee for Communications and Transit.*

To the President of the Council
of the League of Nations.



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